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A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 56, No. 196
Wednesday, October 9, 1991

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 17

Regulations Governing the Financing of Commercial Sales of Agricultural Commodities

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Final rule.

SUMMARY: The Foreign Agricultural Service (FAS) is amending the regulations applicable to the financing of the sale and exportation of agricultural commodities pursuant to title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480), which appeared as an interim rule published in the Federal Register on February 1, 1991 (56 FR 3966), to correct an error therein. The prohibition on financing of payments made to an agency owned or controlled by the participant or government of the destination country should have been limited to payments of commissions.

EFFECTIVE DATE: October 9, 1991. See "Supplementary Information."

FOR FURTHER INFORMATION CONTACT: Connie B. Delaplane, Director, Public Law 480 Operations Division, Export Credits, Foreign Agricultural Service, room 4549 South Building, U.S. Department of Agriculture, 14th and Independence, SW., Washington, DC 20250–1000. Telephone: (202) 447–3664.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "nonmajor." It has been determined that this rule will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in costs to consumers, individual industries, Federal, state or local government agencies or geographic regions; and will not have an adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials. (See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983).

On February 1, 1991, the Foreign Agricultural Service (FAS) published an interim rule at 56 FR 3966 that amended the regulations applicable to the financing of the sale and exportation of agricultural commodities pursuant to title I of the Agricultural Trade Development and Assistance Act of 1954, as amended (Pub. L. 480). Those revisions were implemented to comply with amendments made by the Food, Agriculture, Conservation, and Trade Act of 1990 to Public Law 480 which became effective January 1, 1991. The title I, Public Law 480 regulations had, for many years, stated that a commission "to any agency, including a corporation, owned or controlled by the participant or the government of the destination country is not eligible for financing." (§ 17.8(c)(2)). As stated in the preamble to the interim rule, references to "commissions" in § 17.8(c) were changed to "payments" in order to be consistent with the items required to be reported under § 17.12 of the regulations. Section 17.8(c) defines "payments" to include commissions, fees and any other compensation of any kind and "other compensation of any kind" is defined to mean anything given in return for any consideration, services, or benefits received or to be received.

The effect of this change in § 17.8(c)(2) could be interpreted as preventing the financing of legitimate costs paid by an ocean transportation supplier to an agency owned or controlled by the participant or the government of the destination country for services, such as for discharging or lightening. This was not the intent of the amendment. A prohibition on financing the costs of such services would interfere with normal procedures regarding handling of shipments.

This amendment returns to the use of the term "commissions" in § 17.8(c)(2) and amends the first sentence of § 17.8 to conform thereto. The requirement in § 17.12 that all payments, including commissions, to firms owned or controlled by the participant or the importer must be reported to the Department of Agriculture by suppliers is unaffected by this amendment.

It is found that general notice of proposed rulemaking and public procedures thereon are impracticable, unnecessary, and contrary to the public interest with regard to this rule. Implementing this necessary change through a notice of proposed rulemaking could delay the shipment of needed commodities under the title I, Public Law 480 program as participants may postpone purchases and shipments until the regulation is changed. Alternatively, if shipments went forward, a failure to change the regulation would jeopardize full and timely freight payments to ocean transportation suppliers and unduly burden recipient countries.

This rule relieves a restriction in the present regulations and, therefore, may be made effective upon publication in the Federal Register.

The authority citation is also revised to utilize a more abbreviated format with no substantive change.

List of Subjects in 7 CFR Part 17

Agricultural commodities, Exports, Finance, Maritime carriers.

Accordingly, 7 CFR part 17, subpart A, is amended as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 is revised to read as follows:

Authority: 7 U.S.C. 1701–1705, 1736a, 1736c, 5676; E.O. 12220, 45 FR 44245.

2. Section 17.8, is amended by revising the first sentence of paragraph (c) introductory text and paragraph (c)(2) to read as follows:

§ 17.8 Fees, discounts, commissions, brand names.

* * * * *

(c) *Commissions, fees and payments.* The term "payment" means a commission, fee, or other compensation of any kind. * * *

* * * * *

(2) A commission paid or to be paid to any agency, including a corporation, owned or controlled by the participant or the government of the destination country is not eligible for financing.

* * * * *

Signed at Washington, DC on September 13, 1991.

F. Paul Dickerson,

General Sales Manager, Foreign Agricultural Service; and Vice President, Commodity Credit Corporation.

[FR Doc. 91-24317 Filed 10-8-91; 8:45 am]

BILLING CODE 3410-10-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 100, 208, 235 and 242

[INS No. 1343-91]

RIN 1115-AC67

Asylum Application Mail-in Program to Asylum Offices Issuance of Charging Documents in Exclusion and Deportation Proceedings by Supervisory Asylum Officers

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule establishes procedures to be used in filing for asylum under section 208 and withholding of deportation under section 243(h) of the Immigration and Nationality Act, as amended by the Refugee Act of 1980. The rule modifies the final rule on asylum adjudication. It establishes seven Asylum Offices and their jurisdictions. It further indicates how asylum and withholding of deportation applications should be filed by mail with these Offices instead of with Service district offices and suboffices.

This rule also amends 8 CFR 235.6(a) and 242.1(a) to give authority to issue charging documents in exclusion and deportation proceedings to the Assistant Commissioner, Refugees, Asylum and Parole, and to supervisory asylum officers.

DATES: This interim rule is effective October 9, 1991. Written comments must be submitted on or before November 8, 1991.

ADDRESSES: Please submit comments in triplicate to the Director, Policy Directives and Instructions Branch, Records Systems Division, Immigration and Naturalization Service, room 5304, 425 Eye Street, NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Irma Rios, Senior Asylum Officer, Immigration and Naturalization Service, 425 Eye Street, NW., room 1203, Washington, DC 20536, telephone 202-514-5498.

SUPPLEMENTARY INFORMATION: This modification to the final rule on asylum adjudication published on July 27, 1990 (55 FR 30674), is being published as an interim rule in order to modify filing procedures for asylum and withholding of deportation applications concurrent with the establishing of asylum offices as part of the new asylum adjudication structure created by the July 27, 1990 rule. Comments are solicited and will be considered for possible modification of this rule if it is determined, on the basis of these comments and/or practice, that this change is not beneficial to both the government and the public as is anticipated.

Seven asylum offices have been established at: Newark, NJ; Arlington, VA; Miami, FL; Houston, TX; Chicago, IL; and Los Angeles and San Francisco, CA. These are situated close to where the majority of asylum applications have been filed in past years. Jurisdictions of these offices have been developed to make effective use of full-time asylum officers and to handle asylum applications arising in all Service districts as efficiently as possible. Asylum officers will be assigned to these offices, each of which will be headed by a Director.

The vast majority of asylum interviews will be held at the asylum office sites. Asylum officers periodically will visit district and file control offices more than 300 miles from the asylum office site and ports of entry in order to interview asylum applicants. In addition, and depending on the number of asylum applications received ("receipts"), asylum officers will be including in their circuit rides some locations which are less than the 300-mile limit mentioned above. All scheduling of interviews, including those away from the asylum offices, will be controlled by the Director of the respective asylum office. Therefore, it is essential that asylum applications be received directly by the asylum offices, so that interviews can be scheduled as promptly as possible in keeping with the overall workload within the jurisdiction of each asylum office.

Present mailing and street addresses of the seven asylum offices are provided below. Updates and/or changes to these addresses or locations will be published by Notice in the **Federal Register.**

Newark, New Jersey

(Mailing and street address), 20 Washington Place, 6th Floor, Newark, New Jersey 07102

Arlington, Virginia

(Mailing address), P.O. Box 3599, Arlington, Virginia 22203-0599
(Street address), 1521 North Danville Street, Arlington, Virginia 22201

Miami, Florida

(Mailing address), P.O. Box 351600, Miami, Florida 33135-1600
(Street address), 701 SW 27th Avenue, Suite 1400, Miami, Florida 33135

Houston, Texas

(Mailing address), P.O. Box 670626, Houston, Texas 77267-0262
(Street address), 509 North Belt Street, 4th Floor, Houston, Texas 77060

Chicago, Illinois

(Mailing and street address), 175 West Jackson Boulevard, Suite 1641, Chicago, Illinois 60604

Los Angeles, California

(Mailing address, for an interim basis), P.O. Box 30116, Laguna Niguel, California 92607-0116
(Street address, for an interim basis), 24000 Avila Road, First Floor, Laguna Niguel, California 92677

San Francisco

(Mailing address), P.O. Box 77530, San Francisco, California 94107
(Street address), 1727 Mission Street, San Francisco, California 94103

Applicants residing in the jurisdiction of district offices or suboffices which will not be visited by asylum officers must appear for their interviews at the asylum office with jurisdiction over their place of residence. Applicants whose district or suboffice will be visited by asylum officers and who indicate a willingness to be interviewed at the asylum office will be scheduled for an earlier interview whenever this is possible. Applicants who request asylum at ports of entry will be interviewed by asylum officers at those ports unless exclusion proceedings are commenced against these applicants. The asylum interview will be conducted after the applicant has had time to properly prepare his/her case.

Asylum officers will visit the following district offices and suboffices on a regular basis depending upon workload:

From the Newark Asylum Office: Portland, ME; Buffalo, NY; St. Albans, VT; Boston, MA; and Philadelphia, PA.

From the Arlington Asylum Office: Atlanta, GA; Charlotte, NC; and Pittsburgh, PA.

From the Miami Asylum Office: San Juan, PR; Jacksonville, FL; and Tampa, FL.

From the Houston Asylum Office: Dallas, TX; Denver, CO; El Paso, TX; New Orleans, LA; Harlingen, TX; San Antonio, TX; Salt Lake City, UT; and Memphis, TN.

From the Chicago Asylum Office: Cleveland, OH; Detroit, MI; St. Paul, MN; Kansas City, MO; Omaha, NE; Louisville, KY; St. Louis, MO; Helena, MT; and Cincinnati, OH.

From the Los Angeles Asylum Office: San Diego, CA; Las Vegas, NV; and Phoenix, AZ.

From the San Francisco Asylum Office: Reno, NV; Seattle, WA; Portland, OR; Anchorage, AK; Honolulu, HI; Fresno, CA; and Agana, GU.

This modified procedure for filing asylum applications is expected to benefit both applicants and the government because of the more rapid receipt of applications at the asylum offices and the avoidance of time-consuming alien file transfer arrangements. Interviews will be scheduled as promptly as possible and there will be minimal variation in the time elapsed between the filing of an application and notification of an interview appointment date.

An initial application for employment authorization (Form I–765) may be submitted at the same time as the asylum application. Applicants who have filed non-frivolous asylum applications will be notified to report to local district offices or sub-offices for the issuance of employment authorization documents.

The filing procedures for asylum and withholding of deportation are being modified to include the submission of 2 photographs as part of the application for all applicants and dependents. This modification is required for proof of identity of the applicants. The photographs must meet the specifications required on the Form I–589, Request for Asylum in the United States.

This rule also permits the Assistant Commissioner, Refugees, Asylum and Parole, and supervisory asylum officers to issue charging documents initiating exclusion and deportation proceedings. If the asylum officer denies the asylum claim, the alien may in most cases renew the claim before an immigration judge after the institution of deportation or exclusion proceedings. Under current regulations, however, the asylum officer must refer the case to the district office for issuance of the necessary charging documents. This requirement imposes an administrative burden on both the asylum offices and the district offices. The alien is burdened as well, since any delay in initiation of proceedings delays the alien's opportunity to renew his or her claim before an immigration judge. This rule amends §§ 235.6(a) and 242.1(a) of title 8, Code of Federal Regulations, to give the Assistant Commissioner, Refugees, Asylum and Parole, and the supervisory asylum officers authority to issue the charging documents necessary to institute exclusion or deportation proceedings. This amendment will benefit both the Service and the asylum applicant by assuring prompt initiation of proceedings.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exception found at 5 U.S.C. 553(d). The reason for immediate implementation of this interim rule is that the seven asylum offices already are open throughout the United States. Asylum applicants will be better served by filing their applications directly with the asylum offices, rather than filing applications with district and files control offices, which would then need to forward the applications to the asylum offices. This mail-in procedure for asylum applications will expedite the asylum adjudication process and will prevent the potential loss of applications in the forwarding process. The Service would thereby be able to provide asylum benefits more expeditiously. It is also unnecessary to comply with the notice and comment requirements of 5 U.S.C. 553 in giving the Assistant Commissioner, Refugees, Asylum and Parole, and supervisory asylum officers authority to issue charging documents. This expansion of the authority of these officers relates to agency procedure and practice. As noted above, allowing these officers to issue charging documents will provide for more efficient processing of asylum claims, resulting in more prompt review of these claims by immigration judges. This rule, as a whole, benefits both the Service and aliens who wish to seek asylum in exclusion and deportation proceedings. For these reasons, the Commissioner of Immigration and Naturalization finds that good cause exists for making this rule effective immediately upon publication in the Federal Register.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of E.O. 12291. The information collections in this rule have been approved under the Paperwork Reduction Act under OMB Control No. 1115–0086. Modifications to this information collection have been forwarded to the Office of Management and Budget for their review and clearance.

List of Subjects

8 CFR Part 100

Administrative practice and procedure, Organization and functions (Government agencies).

8 CFR Part 208

Administrative practice and procedure, Aliens, Asylum, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Parts 242

Administrative practice and procedure, Aliens.

Accordingly, title 8, chapter I, subchapter B of the Code of Federal Regulations is amended as follows:

PART 100—STATEMENT OF ORGANIZATION

1. The authority citation for part 100 is revised to read as follows:

Authority: 8 U.S.C. 1103; 8 CFR part 2.

2. Section 100.4 is amended by adding a new paragraph (g) to read as follows:

§ 100.4 Field Service.

* * * * *

(g) *Asylum Offices.* (1) Newark, New Jersey. The Asylum Office in Newark has jurisdiction over the state of Pennsylvania excluding the jurisdiction of the Pittsburgh suboffice, and the States of Maine, New Hampshire, Vermont, New York, Connecticut, Massachusetts, Rhode Island, New Jersey, and Delaware.

(2) Arlington, Virginia. The Asylum Office in Arlington has jurisdiction over the District of Columbia, the western portion of the state of Pennsylvania currently within the jurisdiction of the Pittsburgh suboffice, and the States of Maryland, Virginia, West Virginia,

North Carolina, Georgia, Alabama, and South Carolina.

(3) Miami, Florida. The Asylum Office in Miami has jurisdiction over the State of Florida, the Commonwealth of Puerto Rico, and the United States Virgin Islands.

(4) Houston, Texas. The Asylum Office in Houston has jurisdiction over the States of Louisiana, Arkansas, Mississippi, Tennessee, Texas, Oklahoma, New Mexico, Colorado, Utah, and Wyoming.

(5) Chicago, Illinois. The Asylum Office in Chicago has jurisdiction over the States of Illinois, Indiana, Michigan, Wisconsin, Minnesota, North Dakota, South Dakota, Kansas, Missouri, Ohio, Iowa, Nebraska, Montana, Idaho, and Kentucky.

(6) Los Angeles, California. The Asylum Office in Los Angeles has jurisdiction over the State of Arizona, the southern portion of California as listed in 8 CFR 100.4(b)(16) and 100.4(b)(39), and that southern portion of the state of Nevada currently within the jurisdiction of the Las Vegas suboffice.

(7) San Francisco, California. The Asylum Office in San Francisco has jurisdiction over the northern part of California as listed in 8 CFR 100.4(b)(13), the portion of Nevada currently under the jurisdiction of the Reno suboffice, and the States or Oregon, Washington, Alaska, and Hawaii and the Territory of Guam.

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF DEPORTATION

3. The authority citation for part 208 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1226, 1252, 1282; 8 CFR part 2.

4. Section 208.3 is amended by adding a new last sentence at the end of paragraph (a) to read as follows:

§ 208.3 Form of application.

(a) * * * The application for asylum or withholding of deportation shall also be accompanied by 2 photographs of each applicant and each dependent included on the application.

* * * * *

5. Section 208.4 is amended by:

a. Revising paragraph (a);

b. Redesignating paragraph (b) as paragraph (c); and

c. Adding a new paragraph (b) to read as follows:

§ 208.4 Filing the application.

* * * * *

(a) *With the Asylum Office by mail.* Except as provided in paragraphs (b) and (c) of this section, applications for asylum or withholding of deportation shall be filed directly by mail with the asylum office having jurisdiction over the place of the applicant's residence, or, in the case of an alien without a United States residence, the applicant's current lodging, or over the land border port of entry from which the applicant seeks admission to the United States. The addresses of the asylum offices are available through the local Immigration and Naturalization Service Information Unit.

(b) *With the District Director.* In the cases of:

(1) Stowaways who are presented to the Service,

(2) Crewmen who affirmatively approach a Service officer in order to file for asylum, and

(3) Other aliens seeking admission at a seaport or airport of entry, applications for asylum or withholding of deportation shall be accepted by the District Director having jurisdiction over the port of entry.

The District Director shall immediately forward the application to the asylum office with jurisdiction over that port of entry.

* * * * *

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

5. The authority citation for part 235 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, 1252.

6. In § 235.6, paragraph (a) is amended by adding immediately after the first sentence a new second sentence to read as follows:

§ 235.6 Referral to immigration judge.

(a) Notice. * * * If an asylum officer denies an application for asylum or withholding of deportation filed by an alien who is an applicant for admission or has been paroled under § 212.5 of this chapter, this Notice may be signed and delivered to the alien by the supervisory asylum officer or by the Assistant Commissioner, Refugees, Asylum and Parole. * * *

* * * * *

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

7. The authority citation for part 242 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1252; 8 CFR part 2.

8. Section 242.1 is amended by replacing the "." at the end of paragraph (a)(19) with a ";" and by adding paragraphs (a)(20) and (a)(21) to read as follows:

§ 242.1 Order to show cause and notice of hearing.

(a) * * *

(20) The Assistant Commissioner, Refugees, Asylum and Parole;

(21) Supervisory asylum officers.

* * * * *

Dated: October 3, 1991.

Gene McNary,

Commissioner.

[FR Doc. 91-24291 Filed 10-8-91; 8:45 am]

BILLING CODE 4410-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN: 3084-AA26

Rules for Using Energy Cost and Consumption Information Used in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act; Ranges of Comparability for Refrigerators, Refrigerator-Freezers and Freezers

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: Under the Appliance Labeling Rule, each required label on a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. The Federal Trade Commission publishes the ranges annually in the **Federal Register** if the upper or lower limits of the range change by 15% or more from the previously published range. If the Commission does not publish a revised range, it must publish a notice that the prior range will be applicable until new ranges are published.

The Commission is today announcing that the ranges published for refrigerators, refrigerator-freezers and freezers on November 20, 1990, will remain in effect until new ranges are published.

EFFECTIVE DATE: October 9, 1991.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202-326-3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Commission issued a final rule,[1] pursuant to Section

[1] 44 FR 66466, 16 CFR 305.

324 of the Energy Policy and Conservation Act of 1975,[2] covering certain appliance categories, including refrigerators, refrigerator-freezers and freezers. The rule requires that energy costs and related information be disclosed on labels and in retail sales catalogs for all refrigerators, refrigerator-freezers and freezers presently manufactured. Certain point-of-sale promotional materials must disclose the availability of energy usage information. If a refrigerator, refrigerator-freezer or freezer is advertised in a catalog from which it may be purchased by cash, charge account or credit terms, then the range of estimated annual energy costs for the product must be included on each page of the catalog that lists the product. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of test procedures developed by the Department of Energy, which are referenced in the rule.

Section 305.8(b) of the rule requires manufacturers to report the energy usage of their models annually by specified dates for each product type.[3] Because the costs for the various types of energy change yearly, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing.

To keep the required information in line with these changes, the Commission is empowered, under § 305.10 of the rule, to publish new ranges (but not more often than annually) if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect for the next year.

The annual reports for refrigerators, refrigerator-freezers and freezers have been received and analyzed and it has been determined to retain the 1990 ranges, which were based on a national average electric rate of 7.88 cents per kilowatt hour and were published on November 20, 1990.[4] In consideration of the foregoing, these current ranges for refrigerators, refrigerator-freezers and freezers will remain in effect until the Commission publishes new ranges for these products.

[2] Pub. L. 94–163, 89 Stat. 871 (Dec. 22, 1975).

[3] Reports for refrigerators, refrigerator-freezers and freezers are due by August 1.

[4] 55 FR 48229.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

The authority citation for part 305 continues to read as follows:

Authority: Section 324 of the Energy Policy and Conservation Act (Pub. L. 94–163) (1975), as amended by the National Energy Conservation Policy Act, (Pub. L. 95–619) (1978), the National Appliance Energy Conservation Act, (Pub. L. 100–12)(1987), and the National Appliance Energy Conservation Amendments of 1988, (Pub. L. 100–357)(1988), 42 U.S.C. 6294; sec. 553 of the Administrative Procedure Act, 5 U.S.C. 553.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 91–24304 Filed 10–8–91; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs Not Subject To Certification; Febantel and Praziquantel Paste

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Mobay Corp. The NADA provides for the use of Vercom™, a paste containing febantel and praziquantel, as an anthelmintic in dogs, puppies, cats, and kittens. The supplement adds a warning to the existing label.

EFFECTIVE DATE: October 9, 1991.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV–112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–295–8614.

SUPPLEMENTARY INFORMATION: Mobay Corp., Animal Health Division, Box 390, Shawnee, KS 66201, has filed a supplemental NADA (133–953) which provides for the use of Vercom™, a paste containing febantel and praziquantel, in dogs, puppies, cats, and kittens, as a broad spectrum anthelmintic. The supplement incorporates a warning statement on the label, stating that practitioners should consider alternative therapy or use with caution in animals with pre-existing liver or kidney dysfunction.

The supplemental NADA is approved as of September 12, 1991, and 21 CFR 520.903d is amended to reflect the warning statement. This action does not affect the safety or effectiveness data supporting the original application.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of the safety and effectiveness data and information submitted to support approval of the original application is on file and may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday. An addendum that adds the warning statement approved by this supplement will be placed with the existing freedom of information summary already on file.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Costmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval does not qualify for any term of marketing exclusivity because no new clinical or field investigations conducted by the sponsor were essential to the approval of this supplemental NADA.

The agency has determined under 21 CFR 25.24(a)(9) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.903d is amended by adding new paragraph (c)(4) to read as follows:

§ 520.903d Febantel-praziquantel paste.

* * * * *

(c) * * *

(4) *Special considerations.* Consider alternative therapy or use with caution

in animals with pre-existing liver or kidney dysfunction.

Dated: October 1, 1991.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 91-24280 Filed 10-8-91; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs Not Subject To Certification; Legend™ (Hyaluronate Sodium) Injectable Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Mobay Corp., Animal Health Division. The NADA provides for the intraarticular and intravenous use of Legend™ (hyaluronate sodium) injectable solution in horses for the treatment of carpal or fetlock joint dysfunction due to noninfectious synovitis associated with equine osteoarthritis.

EFFECTIVE DATE: October 9, 1991.

FOR FURTHER INFORMATION CONTACT: Sandra K. Woods, Center for Veterinary Medicine (HFV-114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8617.

SUPPLEMENTARY INFORMATION: Mobay Corp., Animal Health Division, P.O. Box 390, Shawnee Mission, KS 66201, filed NADA 140-883 which provides for the intraarticular and intravenous use of Legend™ (hyaluronate sodium) injectable solution in horses for the treatment of carpal or fetlock joint dysfunction due to noninfectious synovitis associated with equine osteoarthritis. The NADA is approved as of September 12, 1991, and new 21 CFR 522.1145(e) is added to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(ii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(ii)), this approval qualifies for 3 years of marketing exclusivity beginning September 12, 1991, because new clinical or field investigations (other than bioequivalence or residue studies) were essential for approval of the NADA as regards the intravenous route of administration and were conducted or sponsored by the applicant.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 522.1145 is amended by adding new paragraph (e) to read as follows:

§ 522.1145 Hyaluronate sodium injection.

* * * * *

(e)(1) *Specifications.* Each milliliter of sterile aqueous solution contains 10 milligrams of hyaluronate sodium.

(2) *Sponsor.* See 000859 in § 510.600(c)(2) of this chapter.

(3) *Conditions of use*—(i) *Amount.* Intraarticular: 20 milligrams in the carpus or fetlock. Intravenous: 40 milligrams slowly into the jugular vein.

(ii) *Indications for use.* Treatment of carpal or fetlock joint dysfunction in horses due to noninfectious synovitis associated with equine osteoarthritis.

(iii) *Limitations.* For intraarticular or intravenous use in horses only. Treatment may be repeated at weekly intervals for a total of three treatments. Not for use in horses intended for food. The safety of use of this drug in breeding animals has not been determined. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: October 1, 1991.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 91-24281 Filed 10-4-91; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 200

[Docket No. R-91-1492; FR-2708-F-01]

RIN 2502-AE83

Amendments to the Form 2530 Review Process

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule makes certain amendments to the regulations at 24 CFR 200.210-.430, which govern the "2530 Review Process"—the process by which the Department reviews the past performance of principals applying for participation in HUD's multifamily housing programs. The purpose of this rule is to increase the effectiveness of this review process by clarifying existing standards and procedures, and by expanding the ability of the Department to deny approval for principals experiencing mortgage default, assignment or foreclosure.

EFFECTIVE DATE: November 8, 1991.

FOR FURTHER INFORMATION CONTACT: Bruce J. Weichmann, Office of Lender Activities and Land Sales Registration, room 9251, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-0582. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708-4594. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in HUD Form 2530 have been approved by the Office of Management and Budget under section 3504(h) of the Paperwork

Reduction Act of 1980, and assigned OMB control number 2502–0118. This final rule imposes additional information collection requirements because the rule adds a new category of respondents—nursing home administrators and operators. Nursing home administrators and operators may not be subjected to a penalty for failure to comply with these information collection requirements until the requirements have been approved for them by OMB. OMB approval, when received, will be announced by separate notice in the **Federal Register.**

The Department's annual reporting burden for HUD Form 2530 has been revised to include 250 additional respondents (the estimated number of new respondents). The estimated hours per response by each respondent remains unchanged—.6 hours per response. Accordingly, the total number of hours to be added to the annual reporting burden equals 150 hours. This reporting burden is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate may be sent to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention Desk Officer for HUD, Washington, DC 20503.

Background of 2530 Review Process

Since 1966, the Department has utilized a procedure to review the past performance of principals applying for participation in HUD-insured projects to determine whether participation in an additional project should be allowed. The principals are reviewed to see if they have carried out their past financial, legal and administrative obligations in a satisfactory and timely manner. The procedure requires a principal's certification to his or her prior participation in multifamily projects, and the disclosure of other information which could affect the approval for the proposed participation. (The certification is submitted on HUD Form 2530, and in the housing industry the certification/approval process is commonly referred to as the "2530 Review Process".)

Approval through the 2530 Review Process is required for participation in programs insuring multifamily mortgages under the National Housing Act; sale of projects owned or with a mortgage held by HUD (including all-cash sales); finance of projects pursuant to section 202 of the Housing Act of 1959; and participation in public housing projects, as well as certain housing projects of HUD's housing program in which at least 20 percent of the units receive a subsidy from HUD.

The 2530 certificate must be submitted by the owners of a project and by individuals and entities participating in the development, ownership, or management of projects covered by the 2530 Review Process. Approval is granted unless one or more of the specified standards for disapproval are met. It is the Department's policy that participants in HUD housing programs be responsible individuals and organizations who will honor their legal, financial and contractual obligations.

Proposed Amendments to the 2530 Review Process

On October 3, 1990, the Department published, for public comment, proposed amendments to the 2530 Review Process (55 FR 40399). The amendments proposed by the Department were directed to increasing the effectiveness of the 2530 Review Process by clarifying existing standards and procedures, and by expanding the ability of the Multifamily Participation Review Committee (MPRC) to deny approval for principals experiencing mortgage default, assignment or foreclosure. The specific changes to the 2530 Review Process proposed by the Department included the following:

(1) An amendment to § 200.213(c)(3) to clarify that the only section 8 programs exempt from the 2530 Review Process are the tenant-based programs described in 24 CFR 882, subparts A, B, C and F, and the housing voucher program described in 24 CFR part 887;

(2) An amendment to § 200.213(e) to clarify the applicability of the 2530 Review Process to all sales, including "all cash" sales;

(3) An amendment to § 200.215(e) to expand the definition of "principal" to include nursing home administrators and operators;

(4) An amendment to § 200.215 to add a new paragraph (h) that would define "risk" in the context of determining whether a principal's participation in a project would constitute an unacceptable risk;

(5) An amendment to § 200.230(c)–(c)(1) to revise the disapproval standards to allow the MPRC more discretion for disapproval in circumstances where there are mortgage defaults, assignments or foreclosures;

(6) An amendment to § 200.230 to add a new paragraph (f) that would make the submission of a false or materially incomplete 2530 certificate a basis for disapproval (the existing paragraph (f) would be redesignated as paragraph (g)); and

(7) An amendment to § 200.243(a) to limit hearing rights to the submission of written briefs or documentary evidence, where disapproval is based on suspension or debarment.

Discussion of Public Comments

During the comment period, which ended December 3, 1990, the Department received eight (8) comments. The commenters included a mortgage company, three trade associations, a property management company, a private development company, and two law firms. All of the commenters were critical of one or more of the proposed amendments to the 2530 Review Process. The majority of the comments were critical of the proposed definition of "risk" and the proposed amendment to § 200.230 that would revise the disapproval standards to allow the MPRC more discretion for disapproval in circumstances involving mortgage defaults, assignments or foreclosures.

Following careful consideration of these comments, the Department has decided to adopt the amendments to the 2530 Review Process without change. The following presents a discussion of the substantive issues raised by the commenters, and the Department's response to each issue.

1. Applicability of 2530 Review Process to all Cash Sales Is Unnecessary (§ 200.213(e))

One commenter stated that while it had no objection to the amendment to § 200.213(e) clarifying the applicability of the 2530 Review Process to all cash sales, it noted that this would be the first time that projects with no ongoing connection to HUD would be subject to the Review Process. The commenter stated that application of the Review Process to all cash sales may complicate and delay the disposition process; limit interest in bidding; and depress the return to the Department. The commenter also stated that application of the Review Process to all cash sales may be meaningless because the lack of controls would permit the purchaser to transfer the property, or an interest in the property, to an "undesirable" immediately after title is conveyed.

Response. As stated in the preamble to the proposed rule, the amendment to § 200.213(e) is made simply for clarification purposes. Existing § 200.213(e) currently provides that the 2530 Review Process is applicable to "sales of projects by the Secretary."

"Sales of projects" always has been interpreted to include cash sales. Accordingly, the amendment to § 200.213(e) reflects an existing practice—not a change in policy.

2. Include Nursing Home Administrators and Operators as "Principals" Only When They Have an Ownership Interest in the Project (§ 200.215(e))

Two commenters stated that a mortgagee should retain the right to approve or disapprove a nursing home administrator, unless the nursing home administrator or operator has an ownership interest in the nursing home to be insured. The commenters stated that where an administrator or operator has such an ownership interest, then the individual should be required to submit a 2530 certificate. One of the commenters stated that in most cases, the nursing administrator or operator is an employee with no ownership interest in the project and, therefore, the proposed amendment creates reporting requirements that are not needed to protect HUD's interest. The commenter also stated that turnover in nursing home administrators and operators can be significant and, consequently, a requirement that each new administrator or operator submit a 2530 certificate would be burdensome. The commenter further stated that most States require licensed administrators to operate nursing homes in their jurisdictions, and these licensing requirements should be sufficient to protect HUD's interest.

Response. The 2530 Review Process has never been limited to review of only those principals that have an ownership interest in a project. The 2530 Review Process always has extended to individuals or entities participating in the management of projects. The individuals and entities vested with management of a project, as a result of their decisionmaking authority, have the potential, regardless of any ownership interest, to have an impact on the viability of the project, and, consequently, constitute part of the risk profile of a project. The definition of "project" at existing § 200.215(f) includes nursing homes. Nursing home administrators and operators have been included in the definition of "principal" to clarify that these individuals are part of management and, therefore, appropriately part of the 2530 Review Process. As an insurer, the Department believes that it has a sufficient interest in the insured mortgage to justify requiring application of the 2530 Review Process to any management official.

3. The Standards for Determining "Risk" are Subjective (§ 200.215(h))

One of the commenters stated that it was concerned with the proposed definition of "risk" because of the "subjective nature of the standards" by which risk is to be determined. The commenter stated that its concern resulted from the "closed nature" of the 2530 Review Process, which does not formally provide for principals under review to be able to submit documentation to the Review Committee, to meet with the Committee or Committee staff, or to respond to questions or concerns that might surface during the 2530 Review Process. The commenter stated that if the 2530 Review Process was modified to enable applicants to have "these basic rights", it would have no problem with proposed definition of "risk".

Response. The 2530 Review Process currently provides that where approval has been withheld, denied or conditionally granted, the principal may request reconsideration by the MPRC and may submit such supporting material as the principal desires. (See § 200.241.) The 2530 Review Process also provides that a principal whose request for reconsideration has resulted in an adverse determination by the MPRC, or who is disapproved by the Participation Control Officer may request a hearing before a Hearing Officer. (See § 200.243.) These post-decision procedures ensure that principals subject to an adverse determination have the opportunity to respond to problems found with their applications, without causing a delay in the initial determination process. However, the Department is considering whether notification to principals of problems with their applications, before the initial approval determination is made, is appropriate for the 2530 Review Process. In the event the Department determines that this type of notification would be appropriate for the 2530 Review Process, the Department will publish a proposed rule that describes the notification procedure, and will invite public comment.

4. Objections to the Ambiguity of the Term "Financial Stability" and Manner of Determination (§ 200.215(h))

One commenter stated that the definition of "risk" provides for risk to be determined by considering, among other things, the financial stability of the participant. The commenter stated that the term "financial stability" is overly broad and should be defined.

Response. The Department disagrees that the term "financial stability" requires definition. In determining whether an applicant is financially stable, the MPRC may need to take into consideration a number of different factors that affect the financial strength or weakness of a particular applicant. To attempt to delineate these factors through definition of the term "financial stability", may restrict the MPRC's ability accurately to assess the financial stability of an applicant, and may result in an erroneous determination of financial stability. Such a determination not only may be disadvantageous with respect to the interests of the Department, but to the interests of the applicant.

5. Financial Stability Should Be Determined Locally and Should Be Incorporated in the Contracting or Proposal Process, not the Review Process (§ 200.215(h)).

One commenter stated that the financial stability of a principal should be determined at the local level, and not at HUD headquarters. Another commenter stated that if financial stability is a concern of the Department, then consideration of this factor should be built into the technical qualification portion of the contracting or proposal process, and not the 2530 Review Process.

Response. A determination of financial stability of a principal *is* made at the local Field Office. The Department's Field Offices perform in-depth credit and financial evaluations of principals, which include reviewing credit reports, contacting bank and trade references, and analyzing financial statements. Consideration of a principal's financial stability under the 2530 Review Process does not duplicate or replace the evaluation performed by the Field Office. The Form 2530 Review Process includes information not usually available from credit reports and financial statements such as compliance with terms of workout agreements, mortgage modifications, and adequacy of project maintenance and repairs. This includes information from projects outside the jurisdiction of the particular field office conducting the credit evaluation. A principal's financial stability may be indicative of the mortgage risk, and, thus is a valid consideration when evaluating that risk. The extent of a principal's activities, including the principal's default and project maintenance record, is a factor in determining the principal's financial stability under the 2530 Review Process.

6. Clarify the Final Clause of the Definition or Risk (§ 200.215(h))

One commenter stated that the final portion of the definition of "risk" which begins—"other factors which indicate to the MPRC that the principal could not be expected to operate the project in a manner consistent with furthering the Department's purpose"—is too vague to serve as an independent basis for disapproval.

Response. The definition of "risk" specifies those factors which must be taken into consideration in making a determination of a proposed participant's risk to a project, regardless of the type of participant under evaluation. Those factors include financial stability; previous performance in accordance with HUD statutes, regulations and program requirements; and general business practices. Generally, these factors constitute a sufficient basis for determining a proposed participant's risk to a project. The purpose of the inclusion of a "catch-all" phrase in the definition of risk is to encompass any other factors that should be considered in evaluating the risk of a particular applicant, and that may be unique to that applicant, and, therefore, not foreseen as components of a risk determination until the time of submission of the 2530 certificate.

7. The Definition of "Risk" Dilutes Disapproval Standard in § 200.230(c)(7)

One commenter stated that the definition of "risk" appears to be an attempt by the Department to substantially dilute the content of the disapproval standard of § 200.230(c)(7), which, the commenter stated, is the only standard that refers to "risk". The commenter stated that, in referring to this proposed definition of "risk" in the preamble, the Department included the following parenthetical statement—"(Participants in all-cash sales of projects would be approved only if approval would further the objectives of the Department)". (55 FR 40400) The commenter stated that this parenthetical statement made it "apparent" that the proposed change is an attempt to overrule Matter of Gabriel Elias, HUDBCA No. 89–4474–D24, 90–1 BCA, in which Administrative Judge Greszko "appeared to hold that disapproval under clause (7) required a finding of 'underwriting risk' which in turn required a 'continuing post-transaction relationship between the participant and HUD,' and therefore disapproval of a participant in an all-cash sale could not be based on clause (7)." The commenter stated that "this attempt to expand the Department's ability to reject proposed participants in all-cash sales by removing meaningful content from existing disapproval standards is ill-advised and unnecessary." The commenter stated that the existing standards of disapproval provide ample ground for rejecting any all-cash bidders who in fact should be rejected.

Response. The inclusion of a definition of risk is not an attempt by the Department to circumvent the ruling of an administrative law judge in a specific case. The Department does not initiate rulemaking in response to case rulings involving a limited set of circumstances, but, rather, initiates rulemaking in response to matters of general concern, with the objective that the rules will have broad application. The current 2530 regulations provide that the MPRC may disapprove a proposed participant if the MPRC determines that the participant is an unacceptable risk. Accordingly, the inclusion of a definition of "risk" is to provide guidance to the MPRC, and notification to proposed participants, concerning how a determination of unacceptable risk will be made.

8. The Amendment to § 200.230(c) Shifts the Burden of Proof, Makes the Burden Difficult to Meet, and Creates a Time-Consuming Process

One commenter stated that the proposed amendment to § 200.230 shifts the burden of proof with respect to the applicant's responsibility for a project's mortgage default, assignment or foreclosure. The commenter stated that it was concerned with this shift in the burden of proof because of the closed non-participatory nature of the 2530 Review Process. The commenter also stated that under the proposed amendment, the responsibility will be on HUD staff to come up with sufficient proof regarding "causality to overcome the proposed rule's presumption of non-acceptability" and that "this may be too much to ask of persons whose fate is not affected by their decision." Two commenters stated that the proposed amendment will make it difficult for the MPRC to establish the existence of any circumstances beyond the principal's control, and that even more difficult to establish will be whether the principal exhausted all available remedies to control those circumstances. The commenter stated that the proposed amendment is onerous and would result in further processing delays.

Response. The amendment to § 200.230(c) does not create a shift in the burden of proof with respect to an applicant's responsibility for a project's mortgage default, assignment, or foreclosure. Under the 2530 Review Process, the burden always has been on applicants to prove an absence of responsibility, wholly or partially, for a project's mortgage default, assignment or foreclosure. The amendment to § 200.230(c), however, does create a presumption that a principal was responsible for a project's mortgage default, assignment or foreclosure. The Department believes that this presumption is appropriate if a principal is associated with a project that underwent default, assignment or foreclosure. This presumption may be overcome by evidence that shows that the default, assignment or foreclosure resulted from circumstances beyond the principal's control.

With respect to the commenters' concern about the closed non-participatory nature of the 2530 Review Process, the 2530 Review Process, as discussed above, currently ensures, through post-decision procedures, that principals subject to an adverse determination have the opportunity to respond to problems found with their applications. As also discussed above, the Department, is considering further amending the regulations governing the 2530 Review Process to allow applicants to submit documentation in response to perceived problems with their applications *before* a final decision is made. Again, a decision by the Department to modify the 2530 Review Process to include such a procedure would be subject to prior notice and public comment.

9. Specify "Circumstances Beyond the Principal's Control" and Clarify Meaning of "Extenuating and Mitigating" (§ 200.230(c)

One commenter requested that current § 200.230(c)(1) remain unchanged, but that, if the Department decides to adopt the proposed amendment, the Department should specify what constitutes "circumstances beyond the principal's control". The commenter also requested that the Department specify that to be considered grounds for disapproval, any contributing circumstances must have been within the principal's primary control. Another commenter made a similar comment. This commenter requested that the Department clarify how it will make a determination with respect to circumstances beyond the principal's control. Another commenter requested that the Department clarify the meaning of "mitigating and extenuating circumstances" with reference to the Review Committee's ability to make a risk determination.

Response. The wide range of factors covered by the phrases—"circumstances beyond the principal's control" and "extenuating and mitigating factors"—make definitions of these terms impractical. Applicants who seek to participate in HUD housing programs include a wide variety of organizations and individuals of various professions. Accordingly, the "circumstances" that may be beyond a principal's control, or the "extenuating and mitigating" factors may vary greatly given the particular applicant involved and the previous project in which that applicant was involved. The Department does not want to limit the "circumstances" and "factors" which the MPRC may consider in a particular case, which may be the result if the Department were to define these terms.

10. Proposed Removal of the Phrase "Fault or Neglect of Principal" Affects all Bases of Disapproval in § 200.230(c)

One commenter stated that the effect of the proposed amendment to § 200.230(c)(1) is to lower substantially the threshold for disapproval under all the provisions of § 200.230(c). The commenter stated that the proposed amendment establishes a threshold for 2530 disapproval that is lower than any standard for debarment or suspension. The commenter stated that the Department gave no indication as to why the "fault or neglect" standard has been found to be "cumbersome" in the context of any of the bases of disapproval in § 200.230(c).

Response. The purpose of the amendment to § 200.230(c)(1) is not to lower the threshold for disapproval under § 200.230(c) but to have the standard for disapproval, with respect to mortgage defaults, assignments, or foreclosures, relate more precisely to the principal's role in a particular project. As noted earlier in this preamble, applicants seeking to participate in HUD housing programs include a wide variety of organizations and a wide variety of individual professionals. In reviewing the past records of prospective participants, the Department examines the specific roles that the participants played in previous projects, and the specific role that a participant is seeking to play in a new project. For example, a prospective participant may have an excellent record as a developer or owner of a project, but may have a less than acceptable record as a manager. In such a situation, the Department may disapprove the prospective participant as a manager of a new project, but permit participation as a developer or owner. Accordingly, the intention of the amendment to § 200.230(c)-(c)(1) is to make the 2530 Review Process as fair and accurate as possible given the type of project and role a prospective participant is applying for, and given the applicant's past performance in similar projects and similar roles.

11. Proposed Amendment Places an Unnecessary Burden on Certain Principals (§ 200.230(c)(1))

One commenter stated that the Department must consider how the proposed amendment affects certain principals. The commenter stated that the proposed amendment makes many persons, defined as "principal" but who are far removed from any culpability (such as contractors, consultants, architects and attorneys), responsible for proving that the default, assignment or foreclosure was caused by circumstances beyond that person's control. (The commenter noted that current § 200.230(c)(1) provides for rejection of only those principals who are wholly or partially responsible for the mortgage default, assignment or foreclosure.) The commenter requested withdrawal of the proposed amendment to § 200.203(c)(1).

Response. If they have an arms length fee arrangement for professional services, architects and attorneys are not subject to the 2530 Review Process.

12. No Justification for Proposed Amendment (§ 200.230(c)-(c)(1)

Two commenters stated that the Department did not adequately explain why it was changing the burden of proof in § 200.230(c)(1). The commenters stated that the Department should have provided examples of the abuses that occurred under the existing 2530 Review Process. The commenters stated that the public is entitled to know why the language in the current regulation is not sufficient to curtail abuses of the 2530 procedure." One of the commenters stated that "a change such as that embodied in the proposed amendment should be accompanied by a showing of compelling reasons for such change." The other commenter stated that it was concerned that the proposed amendment was intended to effect a fundamental change in the perceived responsibilities of principals in a mortgagor entity.

Response. The current regulations provide that a principal who has defaulted on previous mortgages cannot be disapproved on that basis unless the MPRC finds that the default is "attributable or legally imputable to the fault or neglect of the principal." As was stated in the preamble to the proposed rule, the purpose of the amendment to § 200.230 is to allow the MPRC more discretion for disapproval of a principal who was involved in a project (or projects) that underwent a mortgage default, assignment or foreclosure. As an insurer, the Department is justified in utilizing the procedure that best assists the Department in determining which principals represent an acceptable risk to the mortgage insurance fund. The Department has determined that the amendments adopted by this rule, including the amendment to § 200.230 will increase the effectiveness of the 2530 Review Process.

In order to carry out successfully its risk measuring responsibilities, the ability of the MPRC to deny approval for principals should not be limited to findings of fault or neglect on the part of the principals under review. For example, a principal applying for additional participation may show a mortgage default record with previous or present projects which is marginally acceptable. However, the addition of the particular project under consideration possibly could extend the principal beyond the point where the marginally acceptable record can be maintained, particularly if the project under review is more complex than other projects with which the principal has been associated to date. In such situations, there may be no evidence of fault or neglect on the part of the principal, but the MPRC may find that such additional participation would represent an unacceptable risk. This expansion of the MPRC's ability to disapprove participants who represent an unacceptable risk is justified given the role MPRC, and the 2530 Review Process in general, play in the operation of the HUD mortgage insurance funds.

The health of the HUD mortgage insurance funds depends on the Department selecting for insurance only those transactions which the Department has found to constitute acceptable risks. With respect to the insurance of multifamily housing projects, a risk determination involves not only an evaluation of the property involved, but an assessment of the principals (owners, developers and managers) of the project. A principal that has been involved in previous mortgage defaults, assignments or foreclosures does not reflect an acceptable risk, and should not be approved for participation in a project, unless the principal can establish that the previous defaults, assignments or foreclosures occurred through circumstances beyond the principal's control. The expansion of the MPRC's discretion to disapprove a principal under such circumstances is important

to maintaining the strength and viability of the HUD mortgage insurance programs.

13. Clarify that Submission of a False or Incomplete 2530 Certificate Must be Intentional, and Clarify Meaning of "Materially Incomplete" (§ 200.230(f))

One commenter stated that it had no objection to new § 200.230(f), but requested that the Department clarify that a false or materially incomplete Form 2530 is only so (for the purpose of this provision) if it was submitted knowingly or with reckless disregard of the truth. Another commenter requested that the Department clarify what it means by "materially incomplete."

Response. The 2530 certificate is a very concise, single sheet form. No superfluous or extraneous information is requested by this form. Additionally, each principal must complete and submit a 2530 certificate. The 2530 certificate of a principal only contains information relevant to that principal. Accordingly, given the form of the 2530 certificate and the precise information requested, it is doubtful that a principal would be unaware that a submitted 2530 certificate was either materially incomplete or contained false information.

14. The Proposed Amendment to § 200.243(a) Limiting Hearing Rights is a Violation of Due Process. One commenter stated that the proposed amendment to § 200.243(a), limiting hearing rights to the submission of written briefs or documentary evidence, is "wrong" and violates due process. Another commenter also objected to the proposed amendment and stated that "all parties, regardless of the circumstances, should have the right to a fair hearing of the facts before HUD".

Response. The amendment to § 200.243(a) makes the 2530 proceedings before a Hearing Officer consistent with HUD's debarment and suspension proceedings. The HUD debarment and suspension regulations also limit proceedings before a Hearing Officer to the submission of written evidence. (See 24 CFR 24.314, 24 CFR 24.413)

15. General Comment of Structural Unfairness in the 2530 Review Process.

One commenter stated that the 2530 Review Process has long suffered from a structural lack of fairness, in that applicants have so little standing to present their cases. The commenter stated that the 2530 Review Process has worked well so far because of the "continual fairness and flexibility of HUD's previous participation staff" but that this fairness should be "institutionalized".

Response. The Department is aware that, among those who commented on the October 3, 1990 proposed rule, a repeated criticism of the 2530 Review Process is the lack of notice to applicants of possible problems with their applications, and the lack of an opportunity by applicants to explain, and possibly remedy these problems. As discussed earlier in this preamble, the 2530 Review Process currently provides post-decision procedures, which ensure that principals subject to an adverse determination have the opportunity to respond to problems found with their applications. As also discussed in this preamble, the Department is considering revising the 2530 Review Process to include advance notice to applicants of possible problems with their applications, and the opportunity by applicants to respond to these problems before a final decision is made. Any decision to revise the 2530 Review Process in this manner will be the subject of future proposed rulemaking which will invite public comment.

Other Matters

Impact on Economy

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulation issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individuals industries, Federal, State or local government, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Impact on Small Entities

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule simply clarifies existing policies and procedures involved in the 2530 Review Process.

Regulatory Agenda

This rule is listed as sequence number 1300, under the Office of Housing, in the Department's Semiannual Agenda of Regulations published on April 22, 1991 (56 FR 17360, 17388), under Executive Order 12291 and the Regulatory Flexibility Act.

Environmental Review

At the time of publication of the proposed rule, a Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The proposed rule is adopted by this final rule without change. Accordingly, the initial Finding of No Significant Impact remains applicable.

The Finding of No Significant Impact is available for public inspection and copying Monday through Friday, 7:30 a.m. until 5:30 p.m. in the office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have Federalism implications and, thus, are not subject to review under the Order. The rule is limited to reviewing continuing participation in the Department's programs. No programmatic or policy changes result from its promulgation which would affect existing relationships between Federal and State and local governments.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have a potential significant impact on family formation, maintenance, and general well-being, and, thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Lead poisoning, Loan programs—housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Social Security.

Accordingly, 24 CFR part 200 is amended as follows:

Part 200—INTRODUCTION

1. The authority citation for 24 CFR part 200 continues to read as follows:

Authority: Titles I, II, National Housing Act (12 U.S.C. 1701–1715z–18); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 200.213, paragraph (c)(3) and paragraph (e) are revised to read as follows:

§ 200.213 Applicability of procedure.

* * * * *

(c) * * *

(3) Housing assistance payments under section 8 of the United States Housing Act of 1937 (with the exception of the programs described in 24 CFR part 882, subparts A, B, C and F, and in 24 CFR part 887, which are tenant-based programs);

* * * * *

(e) Sales of projects by the Secretary, including "all cash" sales.

* * * * *

3. In § 200.215, paragraph (e)(1) is revised and a new paragraph (h) is added, to read as follows:

§ 200.215 Definitions.

* * * * *

(e) *Principal.* (1) An individual, joint venture, partnership, corporation, trust, nonprofit association, or any other public or private entity proposing to participate, or participating, in a project as sponsor, owner, prime contractor, Turnkey Developer, management agent, nursing home administrator or operator, packager, or consultant; and architects and attorneys who have any interest in the project other than an arms-length fee arrangement for professional services.

* * * * *

(h) *Risk.* In order to determine whether a participant's participation in a project would constitute an unacceptable risk, the following factors must be considered: Financial stability; previous performance in accordance with HUD statutes, regulations, and program requirements; general business practices; or other factors which indicate to the MPRC that the principal could not be expected to operate the project in a manner consistent with furthering the Department's purpose of supporting and providing decent, safe and affordable housing for the public.

4. In § 200.230, paragraphs (c) introductory text and (c)(1) are revised, and current paragraph (f) is redesignated as paragraph (g) and a new paragraph (f) is added, to read as follows:

§ 200.230 Standards for disapproval.

* * * * *

(c) Unless the Review Committee finds mitigating or extenuating circumstances that enable it to make a risk determination for approval, any of the following occurrences attributable or legally imputable to a principal may be the basis for disapproval, whether or not the principal was actively involved in the project:

(1) Mortgage defaults, assignments or foreclosures, unless the Review Committee determines that the default, assignment or foreclosure was caused by circumstances beyond the principal's control;

* * * * *

(f) Submission of a false or materially incomplete form 2530 certification application.

* * * * *

5. In § 200.243, paragraph (a) is revised to read as follows:

§ 200.243 Hearing rules—How and when to apply.

(a) A principal who has been disapproved, conditionally approved, or who has had approval withheld by the Review Committee, either initially or after reconsideration, or who is disapproved by the Participation Control Officer, may request a hearing before a Hearing Officer. The hearing will be conducted in accordance with the provisions of 24 CFR part 26, except as modified by this section. Requests for hearing must be made within 30 days from the date of receipt of notice of the adverse determination.

(1) Except as provided in paragraphs (a)(2) and (3) of this section, a principal may request an oral hearing before a hearing officer.

(2) Where a disapproval is based solely on a suspension or debarment that has been previously adjudicated, the hearing shall be limited to the opportunity to submit documentary evidence and written briefs for consideration by a hearing officer.

(3) Where a disapproval is based on a suspension and an appeal is pending, the hearing shall be stayed pending the outcome of the suspension, unless the parties and the hearing officer agree that the matter should be consolidated with the suspension for hearing.

* * * * *

Dated: June 18, 1991.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 91–24226 Filed 10–8–91; 8:45 am]

BILLING CODE 4210–27–M

NATIONAL LABOR RELATIONS BOARD

29 CFR Part 102

Procedural Rules

AGENCY: National Labor Relations Board.

ACTION: Final rules.

SUMMARY: The National Labor Relations Board is revising its rules to provide for a minimum type size that may be utilized in documents filed with the Agency. The intended effect of the change is to prevent parties to Board proceedings from circumventing page limitation requirements by filing documents utilizing substandard type sizes and to help insure the legibility of other documents for which no page limitation exists.

EFFECTIVE DATE: November 8, 1991.

FOR FURTHER INFORMATION CONTACT: John C. Truesdale, Executive Secretary, 1717 Pennsylvania Avenue, NW., room 701, Washington, DC 20570, Telephone: (202) 254–9430.

SUPPLEMENTARY INFORMATION: The National Labor Relations Board has concluded that parties to Board proceedings occasionally have attempted to circumvent page limitations by filing papers utilizing small type or narrow margins. Accordingly, the Board is revising section 102.114 of its rules in order to establish a minimum type size and margin width that may be utilized in documents filed with the Board. The change also will help insure the legibility of other documents for which no page limitation exists.

The title of § 102.114 is modified to include reference to the fact that the section now covers the subject of the form of papers to be filed with the Board. Paragraph (a) is retained without modification. The present paragraph (b) is renumbered to become paragraph (c) and is otherwise unchanged. A new paragraph (b) is added. This new paragraph establishes a minimum type size of "elite" type or its equivalent (12 typewritten characters per inch), the size type presently utilized in Board slip opinions. The other commonly employed type, known as "pica," is larger (10 typewritten characters per inch), and so is also permitted. So far as the Board is aware, elite and pica typewriters and printers are commonly employed throughout the country, so the rule should have no adverse impact on any party appearing before the Agency.

The new rule also provides that documents be filed on 8½ by 11-inch

plain white paper, have margins no smaller than one inch on any side, and be double spaced (except that quotations and footnotes may be single spaced). Finally, the rule specifies that carbon copies shall not be filed.

No special attempt has been made to accommodate typographically printed documents. Typographic printing methods typically compress far more words onto a single page than is possible with typewriters or with standard computer printers that print in the manner of a typewriter. Accordingly, if the Board were to establish an acceptable typographic type size, it would have to reduce the page size of the document to prevent parties who used that method from circumventing the intent of applicable page limitations. See, e.g., Supreme Court Rules 33 and 34, setting different page limits and page sizes for documents depending on whether they are typographically printed or typewritten. Because virtually all documents filed with the National Labor Relations Board are typewritten, the Board has opted not to attempt to formulate the complex set of rules that would be necessary to accommodate traditional typographic printing methods. Parties wishing to submit typographically printed documents may do so, but the type must be set to conform with the requirement that it be the equivalent of elite or larger typewriting.

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the NLRB certifies that this rule will not have a significant impact on a substantial number of small businesses.

List of Subjects in 29 CFR Part 102

Administrative practice and procedure, Labor management relations.

PART 102—[AMENDED]

Accordingly, 29 CFR part 102 is amended as follows:

1. The authority citation for 29 CFR part 102 continues to read as follows:

Authority: Section 6, National Labor Relations Act, as amended (29 U.S.C. 151, 156). Section 102.117(c) also issued under Section 552(a)(4)(A) of the Freedom of Information Act, as amended (5 U.S.C. 552(a)(4)(A)). Sections 102.143 through 102.155 also issued under Section 504(c)(1) of the Equal Access to Justice Act, as amended (5 U.S.C. 504(c)(1)).

2. In § 102.114, the heading and paragraphs (b) and (c) are revised to read as follows:

§ 102.114 Service of papers by parties; form of papers; proof of service.

* * * * *

(b) Papers filed with the Board, General Counsel, Regional Director, Administrative Law Judge, or Hearing Officer shall be typewritten or otherwise legibly duplicated on 8½ by 11-inch plain white paper, shall have margins no less than one inch on each side, shall be in a typeface no smaller than 12 characters-per-inch (elite or the equivalent), and shall be double spaced (except that quotations and footnotes may be single spaced). Carbon copies shall not be filed and will not be accepted. Nonconforming papers may, at the Agency's discretion, be rejected.

(c) The person or party serving the papers or process on other parties in conformance with §§ 102.113 and 102.114(a) shall submit a written statement of service thereof to the Board stating the names of the parties served and the date and manner of service. Proof of service as defined in § 102.114(a) shall be required by the Board only if subsequent to the receipt of the statement of service a question is raised with respect to proper service. Failure to make proof of service does not affect the validity of the service.

* * * * *

Dated, Washington, DC, October 2, 1991.

By direction of the Board:

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 91-24318 Filed 10-8-91; 8:45 am]

BILLING CODE 7545-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 414

[BPD-742-IFC]

RIN 0938-AF57

Medicare Program; Continuous Use of Durable Medical Equipment

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: We are setting forth in this interim final rule with comment period the Secretary's determination, required under section 1834(a)(7)(A) of the Social Security Act, of the meaning of the term "continuous" as that term is used in defining a period of continuous use for which we make payments for durable medical equipment.

DATES: *Effective Date:* This final rule is effective November 8, 1991.

Comment Date: Comments will be considered if we receive them at the appropriate address, as provided below, by 5 p.m. on November 25, 1991.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-742-IFC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC 20201.

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. If comments concern information collection recordkeeping requirements, please address a copy of comments to: Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3001, New Executive Office Building, Washington DC 20503. Attention: Allison Herron Eydt

In commenting, please refer to file code BPD-742-IFC. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-245-7890).

FOR FURTHER INFORMATION CONTACT: William Long, (301) 966-5655.

SUPPLEMENTARY INFORMATION:

I. Background

Section 4062(b)(1) of the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100-203) added section 1834 to the Social Security Act (the Act) to provide for a completely restructured Medicare payment methodology for durable medical equipment (DME) and orthotic and prosthetic devices. Section 1834 of the Act, as amended by section 411(g)(1) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100-360), section 608(d)(22)(A) of the Family Support Act of 1988 (Pub. L. 100-485), and sections 6112 and 6140 of the Omnibus Budget Reconciliation Act of 1989 (Pub. L. 101-239), provides special payment rules for DME, prosthetics, and orthotics furnished on or after January 1, 1989. Section 4152 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508) amends the payment rules for DME

items furnished on or after January 1, 1991.

More specifically, sections 1834(a)(2) through (a)(7) of the Act set forth six separate classes of DME, orthotics, and prosthetics and describe how the fee schedule for each class is established. The six classes of items are:

- Inexpensive and other routinely purchased DME.
- Items requiring frequent and substantial servicing.
- Customized items.
- Oxygen and oxygen equipment.
- Other covered non-DME items.
- Other items of DME (capped rental items).

Under section 1834(a)(7)(A)(i) of the Act, payment is made on a monthly basis for the rental of items of DME (capped rental items) that are not paid for under the other five classes of items set forth in sections 1834(a)(2) through (6) of the Act. For DME items furnished on or after January 1, 1989, payment for a capped rental item may not exceed a period of continuous use of longer than 15 months. If a beneficiary's continuous use of an item of DME exceeds 15 months, we pay a capped rental payment only for the first 15 months. After the 15-month period, the supplier retains ownership of the item and must continue to provide the item without any charge to the beneficiary until medical necessity ends or Medicare coverage ceases.

For capped rental DME items furnished on or after January 1, 1991, section 1834(a)(7)(A)(i) of the Act, as amended by section 4152(c)(2) of Public Law 101–508, requires that in the 10th continuous month during which payment is made for a capped rental item, a supplier must give individual beneficiaries the option of converting the rental equipment to purchased equipment. If a beneficiary accepts this purchase option, the period of continuous use for which capped rental payments can be made under section 1834(a)(7)(A)(i) of the Act is limited to 13 months.

Section 1834(a)(7)(A) of the Act requires that the Secretary determine the meaning of the term "continuous" as that term is used in defining a period of continuous use for which we make payments for capped rental DME items. The purpose of this interim final rule is to implement our definition of what constitutes a period of continuous use.

Recently, the United States District Court for the District of Puerto Rico, in *Medics, et al.* v. *Sullivan*, No. 88–2120–JAF (D.P.R. May 31, 1991), ordered us to proceed more expeditiously to define the word "continuous" as used in section 1834(a)(7) of the Act through notice and comment rulemaking. We have previously published our definition of the continuous use period for DME items on an interim basis in section 5102.1.E of the Medicare Carriers Manual (HCFA Transmittals No. 1279 and 1395). However, in order to comply with the court order, we are adding a new § 414.230 to set forth our determination of what constitutes a period of continuous use for purposes of delineating the period for which we make payment for capped rental items under section 1834(a)(7) of the Act.

In defining the term "continuous use," we considered the language contained in the House Committee Report for Public Law 100–203. That report states that if a patient's medical need for an item of DME terminated prior to the expiration of 15 months, but the need recurred, a new 15-month period would begin. (See H.R. Rep. No. 391, 100th Cong., 1st Sess. 395 (1987).) We believe that this language indicates that Congress contemplated that only cessation of the patient's medical need for the equipment would terminate a period of continuous use. Therefore, we are defining "continuous use" as a period that will begin with the first month of medical need and continue until the patient's medical need for a particular item of equipment ceased. That period could be interrupted for reasons other than a termination of medical need, such as a hospitalization. During an interruption, the capped rental period will not be terminated but temporarily suspended. For example, if a beneficiary rents an item of equipment for 12 months and is then hospitalized for 60 days and the beneficiary's medical need for the equipment did not cease, upon his or her discharge from the hospital, the beneficiary will be considered to be in the 13th month of rental for purposes of calculating the capped rental period. Moreover, for the 2 months the beneficiary was hospitalized, no separate payment under Medicare Part B will be made for the item of equipment.

If a period of interruption is extensive, the supplier may wish to retrieve the item of equipment during that period and return the item after the interruption. If, however, the beneficiary does not use an item for longer than 60 days plus the days remaining in the last paid rental month, a new capped rental period begins upon the beneficiary's resumption of use and the physician's recertification of medical necessity. A recertification must include a new prescription and a statement describing the reason for the interruption and demonstrating that medical necessity ended. If no recertification is submitted by the supplier, a new capped rental period will not begin.

The period of continuous use for capped rental items may also be affected if a beneficiary moves or requires a change in suppliers. The House Committee report provides that, "* * * if a patient were to relocate his residence or change suppliers, but did not otherwise have a break in use during an uninterrupted period, that should be considered continuous." (H.R. Rep. No. 391, 100th Cong., 1st Sess. 395 (1987).) Based on the clear congressional intent, we have decided that once the initial rental period starts, a move by the beneficiary, either permanently or temporarily, or a change of supplier, will not result in a new rental episode or a break in the period of continuous use. If the period had already expired, we will not make any additional payments. However, in the event that the medical needs of the beneficiary were to change, necessitating an equipment change either through the addition of equipment or a change to different equipment, a new capped rental period will begin for the new or additional equipment. A new capped rental period will not begin for base equipment that is modified.

If the beneficiary's medical necessity is interrupted after the 15-month period, the rules governing continuous medical need, discussed above, will also apply. That is, the beneficiary's period of continuous use after the initial 15-month period also could be interrupted occasionally by various factors (such as hospitalization) without being terminated. However, claims for equipment that are submitted after the 15-month cap has been reached and which purport to be for a new period of medical necessity will be subjected to an intense carrier medical review.

Our policy concerning the period of continuous use for which capped rental payments may be made, as delineated in HCFA Transmittals 1279 and 1395 to the Medicare Carriers Manual, has been in effect on an interim basis since January 1, 1989.

II. Changes to the Regulations

We are setting forth our rules concerning a period of continuous use in new § 414.230, which will be a part of subpart D (Payment for Durable Medical Equipment and Prosthetic and Orthotic Devices) of a new part 414 (Payment for Part B Medical and Other Health Services). We intend to issue a separate final rule for other provisions that concern payment for durable medical equipment.

III. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final rule that meets one of the E.O. criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-base enterprises in domestic or export markets.

The impact on the Medicare program and on DME distributors and manufacturers is expected to be less than $100 million per year over the next five fiscal years. For this reason, we have determined that a regulatory impact analysis meeting the requirements of E.O. 12291 is not required. Therefore, we have not prepared one.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities.

In 1989, total Medicare expenditures for capped rental items of DME equalled approximately $350 million. We expect that the policy on continuous use of DME that we are implementing in this interim final rule with comment period will affect only a small portion of the transactions involving capped rental DME. Although it is possible that some highly specialized DME manufacturers or suppliers may experience significant effects as a result of this policy, we cannot determine whether the effects will be detrimental or beneficial because we lack data on individual company sales or on practice patterns with respect to equipment rentals. Overall, however, the impact of this final rule on the $3.9 billion DME industry will be insignificant. Thus we have determined, and the Secretary certifies, that this final rule will not meet the criteria of the RFA for requiring a regulatory flexibility analysis. Therefore, we have not prepared one.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. Since we have determined, and the Secretary certifies, that this final rule will not have a significant economic impact on the operations of a substantial number of small rural hospitals, we have not prepared a rural hospital impact statement.

IV. Other Required Information

A. Waiver of Notice of Proposed Rulemaking

Because the Secretary is defining the term "continuous" as used in section 1834(a)(7)(A) of the Act, we ordinarily would publish a notice of proposed rulemaking and afford a period for public comment. However, section 4039(g) of Public Law 100–203 expressly provides that the Secretary may issue regulations on an interim or other basis as may be necessary to implement the amendments made by subtitle A of Public Law 100–203, which includes the provisions in section 4062 being implemented here. Moreover, the Court in *Medics* v. *Sullivan* sustained the implementation of our continuous use policy on an interim basis, subject to its order that we conduct expedited notice and comment rulemaking and issue a final rule. Until that time, the Court has directed that our continuous use policy, as spelled out in HCFA Transmittals 1279 and 1395 to the Medicare Carriers Manual (and set forth in this interim final rule) will remain in effect. Therefore, we find good cause to waive the notice of proposed rulemaking and to issue these regulations on an interim basis. As directed by the Court, we are providing a 45-day public comment period, and we will publish a final rule as expeditiously as possible following the close of the comment period.

B. Paperwork Reduction Act

Sections 414.230(c) and (e) of this rule contain information collection requirements subject to review by the Executive Office of Management and Budget (OMB) under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3511). In the near future, we will submit a copy of this document to OMB for its review of these information collection requirements. Comments concerning these information collection requirements should be directed to the OMB official whose name appears in the "ADDRESSES" section of this preamble.

C. Public Comments

Because of the large number of items of correspondence we normally receive on an interim final rule with comment period, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and when we proceed with the final rule, we will respond to the comments in the preamble to the final rule.

List of Subjects in 42 CFR Part 414

End-stage renal disease (ESRD), Durable medical equipment, Health professions, Laboratories, Medicare.

42 CFR chapter IV, part 414 is amended as set forth below:

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

Subchapter B—Medicare Program

PART 414—PAYMENT ON A REASONABLE CHARGE BASIS

1. The authority citation for part 414 is revised to read as follows:

Authority: Secs. 1102, 1833(a), 1834(a), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 13951(a), 1395m(a), 1395hh, and 1395rr).

2. A new subpart D, consisting of § 414.230, is added to read as follows:

Subpart D—Payment for Durable Medical Equipment and Prosthetic and Orthotic Devices

§ 414.230 Determining a period of continuous use.

(a) *Scope.* This section sets forth the rules that apply in determining a period of continuous use for rental of durable medical equipment.

(b) *Continuous use.* A period of continuous use begins with the first month of medical need and lasts until a beneficiary's medical need for a particular item of durable medical equipment ends.

(c) *Temporary interruption.* (1) A period of continuous use allows for temporary interruptions in the use of equipment.

(2) An interruption of not longer than 60 consecutive days plus the days remaining in the rental month in which use ceases is temporary, regardless of the reason for the interruption.

(3) Unless there is a break in medical necessity that lasts longer than 60 consecutive days plus the days remaining in the rental month in which use ceases, medical necessity is presumed to continue.

(d) *Criteria for a new rental period.* If an interruption in the use of equipment continues for more than 60 consecutive days plus the days remaining in the rental month in which use ceases, a new rental period begins if the supplier submits all of the following information—

(1) A new prescription.

(2) New medical necessity documentation.

(3) A statement describing the reason for the interruption and demonstrating that medical necessity in the prior episode ended.

(e) *Beneficiary moves.* A permanent or temporary move made by a beneficiary does not constitute an interruption in the period of continuous use.

(f) *New equipment.* If a beneficiary changes equipment based on a physician's prescription, and the new equipment is found to be necessary, a new period of continuous use begins for the new equipment. A new period of continuous use does not begin for equipment that is modified.

(g) *New supplier.* If a beneficiary changes suppliers, a new period of continuous use does not begin.

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 25, 1991.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: August 2, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91–24188 Filed 10–8–91; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6887

[UT–942–4214–10; U–0145311]

Withdrawal of Public Land for Simpson Springs Historic and Recreation Site; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 107.50 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the Simpson Springs Historic and Recreation Site. All of the land has been and will remain open to mineral leasing.

EFFECTIVE DATE: October 9, 1991.

FOR FURTHER INFORMATION CONTACT: Michael L. Barnes, BLM Utah State Office, P.O. Box 5155, Salt Lake City, Utah 84145–0155, 801–539–4119.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. ch. 2), but not from leasing under the mineral leasing laws, to protect a Bureau of Land Management historic and recreation site:

Salt Lake Meridian

T. 9 S., R. 8 W.,
Sec. 18, S½NW¼NE¼, N½SW¼NE¼, N½S½SW¼NE¼, W½E½SE¼NE¼, W½SE¼NE¼, SE¼SE¼SE¼NE¼, N½NE¼SE¼, and N½SE¼NE¼SE¼.

The area described contains 107.50 acres in Tooele County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: October 1, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91–24287 Filed 10–8–91; 8:45 am]

BILLING CODE 4310–DQ–M

FEDERAL MARITIME COMMISSION

46 CFR Part 550

[Petition No. P3–91; Docket No. 91–41]

Application of Trailer Marine Transport Corporation Under Section 35 of the Shipping Act, 1916

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission amends its regulations governing the publishing, filing and posting of tariffs in domestic offshore commerce pursuant to the Shipping Act, 1916. This amendment of part 550 adds a new exemption for carriers providing port-to-port service in the Puerto Rico and Virgin Islands domestic offshore trades. Such carriers may now change on one day's notice any tariff regulation, rule or note that reduces the shipper's cost of transportation and may also file on one day's notice any new tariff regulation, rule or note that does not increase the shipper's cost of transportation. Provisions of the Intercoastal Shipping Act, 1933, and the Commission's regulations that pertain to any "general decrease in rates" are not affected by this amendment and carriers must continue to comply with those provisions.

EFFECTIVE DATE: This action is effective October 9, 1991.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5740.

Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 1100 L Street, NW., Washington, DC 20573, (202) 523–5796.

SUPPLEMENTARY INFORMATION: Trailer Marine Transport Corporation ("TMT") has filed an Application for Exemption ("Application") under section 35 of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. 833a, that seeks relief from the 30-day tariff filing requirement of section 2 of the Intercoastal Shipping Act, 1933 ("1933 Act"), *id.* 844. The exemption would permit carriers in the trade between the U.S. and Puerto Rico and the U.S. Virgin Islands that are regulated by the Federal Maritime Commission ("FMC" or "Commission") to file on one day's notice any changes in tariff rules, regulations or notes that would reduce the shipper's cost of transportation. In addition, the exemption would permit the filing on one day's notice of new rules, regulations and notes that would either reduce the shipper's cost of transportation, or result in no change to the shipper's cost.

A notice of the filing of the Application was published in the Federal Register (56 FR 28757) and comments supporting the Application were submitted by Matson Navigation Company ("Matson"), Puerto Rico Maritime Shipping Authority ("PRMSA"), Tropical Shipping & Construction Co. Ltd. ("Tropical"), and Sea-Land Service, Inc. ("Sea-Land"). A comment opposing the Application was

filed by the Caribbean Shippers Association, Inc. ("CSA").[1]

The Application

TMT states that it provides direct, all water service between the mainland United States and Puerto Rico ("Puerto Rico Trade").[2] It also offers service between the mainland United States and the U.S. Virgin Islands and between Puerto Rico and the U.S. Virgin Islands ("U.S. Virgin Islands Trade").[3] TMT also files tariffs with the Interstate Commerce Commission ("ICC") for joint through motor-water service between the mainland United States and Puerto Rico and the U.S. Virgin Islands.

TMT states that Tropical is a major competitor in the trade between the mainland United States and the U.S. Virgin Islands. Although Tropical has both FMC and ICC tariffs, TMT believes that over 90 percent of Tropical's traffic moves under its ICC tariff.

TMT states that PRMSA provides service in the Puerto Rico Trade and service between the mainland United States and the U.S. Virgin Islands via Puerto Rico. PRMSA is said to have four tariffs on file with the ICC covering these services.[4] Although PRMSA has filed a tariff with the FMC, TMT estimates that 45 percent of PRMSA's traffic is ICC-regulated. TMT states that PRMSA files no tariff with the FMC covering the U.S. Virgin Islands. Allegedly, it applies a Puerto Rico-U.S. Virgin Islands arbitrary to the rates shown in its ICC-regulated tariffs in the Puerto Rico Trade in order to construct a rate applicable between the mainland United States and the U.S. Virgin Islands.

TMT claims that Sea-Land is also a principal competitor in the Puerto Rico Trade. Sea-Land is said to operate primarily under two joint through motor-water tariffs that are filed with the ICC.[5] *Id.* TMT states that Sea-Land offers only a limited port-to-port service pursuant to its FMC tariff.[6] TMT allegedly competes with other smaller carriers, both vessel operators and non-vessel-operating common carriers, that file joint through motor-water tariffs at the ICC.

TMT states that under the regulations issued by the ICC, 49 CFR 1312.39(h)(1),[7] carriers filing joint motor-water rates with the ICC may file any new and reduced "rate, charge, rule or other provision" on one day's notice. Thus, it is claimed that any tariff change that reduces the cost to the shipper may be filed on one day's notice, whether the change is to a rate, a charge, a note or rule.

TMT alleges that it competes for major moving commodities under its FMC-regulated tariff in the U.S. Virgin Islands Trade with PRMSA and Tropical, which offer service pursuant to tariffs filed with the ICC. TMT anticipates that its inability to make changes in tariff rules that result in a reduction in the shipper's cost on less than 30 days' notice will result in the loss of business to PRMSA and Tropical.

Likewise, TMT alleges that its competitors have extensive ICC-regulated tariffs in the Puerto Rico Trade. TMT cites two examples of where it was forced to wait thirty days to make changes in tariff rules that resulted in a savings to the shipper.

TMT points out that the FMC granted relief similar to that requested here in *Matson Navigation Co., Inc.— Application for Section 35 Exemption,* ____ F.M.C.____, 24 S.R.R. 1518 (1989), *Tariff Filing Notice Periods— Exemption,* ____F.M.C. ____, 24 S.R.R. 1604 (1989), *Application of Sea-Land Service Inc. For Exemption Under Section 35 of the Shipping Act, 1916,* ____F.M.C. ____, 25 S.R.R. 660 (1990), and *Tropical Shipping & Construction Co.. Ltd.— Application for Section 35 Exemption,* ____F.M.C. ____, 25 S.R.R. 1471 (1991) ("*Tropical*"). TMT alleges that granting the present Application would not impair effective regulation by the Commission any more than the exemptions which have been previously granted.

Comments

A. Matson

Matson supports TMT's application and requests that the proposed exemption be expanded to include the Hawaii trade.[8] Matson claims that for approximately two years after the Matson Exemption was granted, Matson interpreted the exemption as permitting any tariff change that resulted in a reduction to be filed on one day's notice. Both changes in rates and changes in rules were allegedly filed on one day's notice. Matson states that the Commission's staff originally acquiesced in Matson's interpretation, but has recently construed the exemption more narrowly. According to Matson, the FMC staff no longer permits amendments resulting in reductions which are set forth in rules or notes to items to be filed on one day's notice. Matson believes that the competitive situation described in TMT's application roughly parallels that faced by Matson in the Hawaii trade. Matson requests that the Commission grant TMT's application and extend its application to the Hawaii trade.

B. PRMSA

PRMSA contends that having two different notice periods for reductions, one day's notice for rates and thirty days' notice for rules and notes, has the potential for confusing the shipping public. PRMSA believes that the inability of FMC-regulated carriers to make rule changes on one day's notice can work to their disadvantage. As an example, PRMSA points out that ICC-regulated carriers can reduce bunker fuel surcharges on one day's notice while FMC-regulated carriers must wait thirty days.

C. Sea-Land

Sea-Land states that it competes with carriers in the Puerto Rico Trade that operate exclusively under tariffs filed at the ICC, and carriers which operate under both FMC and ICC-regulated tariffs. It contends that the current regulatory scheme places carriers that operate under FMC tariffs at a disadvantage with respect to ICC-regulated carriers. Sea-Land states that the ICC's regulations permit a carrier to file on one day's notice any change in a rule or note that results in a rate reduction to the shipper, while under the regulatory scheme administered by the FMC, such changes must be filed on thirty days' notice. This, it is claimed, inhibits the carrier from taking tariff

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[1] The Caribbean Shippers Association, Inc. states that it represents a number of shippers and receivers involved in the Caribbean trades, both to Puerto Rico and the U.S. Virgin Islands.

[2] TMT Freight Tariff No. 13, Tariff FMC–F No. 9.

[3] TMT Freight Tariff No. 11, Tariff FMC–F No. 7.

[4] ICC PRMU 102, ICC PRMU 205, ICC PRMU 209A and ICC PRMU 211A.

[5] ICC SEAU 435 and ICC SEAU 534.

[6] Sea-Land Tariff FMC–F No. 61.

[7] (h) *Freight rate tariffs and classifications of railroads, motor common carriers of property and freight forwarders—notice for independent rate changes*—(1) *New and reduced rates.* Except as otherwise provided in paragraphs (h) (2), (4) and (5) of this section, each independently established new or changed rate, charge, rule or other provision shall be filed with Commission in Washington, DC at least 1 day before the date upon which it is to become effective.

[8] The question of whether the requested exemption should be extended to cover the Hawaii trade is not properly before the Commission. The **Federal Register** notice did not indicate that an exemption was being sought for the Hawaii trade. In order to give the public opportunity to comment, it would be necessary to republish notice of the Application together with Matson's request in the **Federal Register**. Rather than dealing with Matson's request in the context of this Application, the Commission is instituting on its own motion by separate document issued this date a Notice of Proposed Rulemaking to consider an exemption covering all of the domestic offshore trades that would permit the filing on one day's notice of all new or changed rates, regulations, rules and notes that do not increase the shipper's cost of carriage.

actions in response to the needs of shippers.

D. Tropical

Tropical supports TMT's Application insofar as it pertains to the U.S. Virgin Islands Trade served by Tropical. Tropical maintains that the Application is both pro-carrier and pro-shipper. Shippers, it is said, will benefit because rule, regulation or note changes that result in a reduction in their costs will go into effect more quickly; carriers will allegedly benefit because they will be able to move more quickly to meet changes filed by ICC-regulated carriers. Tropical believes that TMT's Application, if granted, would not only not cause discrimination, it would have a positive effect on carriers, shippers and the trade and would promote, not be detrimental to, commerce.

In support of its contention that the requested exemption will not impair effective regulation by the Commission, Tropical cites the FMC's decision in *Tropical,* wherein it is stated:

> * * * the U.S.-U.S. Virgin Islands Trade is open to foreign flag competition. Clearly, the Trade represents a contestable market. Carriers can enter and exit the Trade with relative ease, free from governmental interference. Thus, competition, both actual and potential, may be expected to curtail the sort of problems CSA envisions.

25 S.R.R. at 1474–75. The same competitive factors that the Commission recognized in *Tropical* would prevent the abuse of the exemption pertaining to rates are said to exist with respect to changes in rules, regulations and notes.

Tropical claims that it has already been harmed by the requirement that changes in regulations, rules and notes be filed with the FMC on thirty days' notice. Several examples are provided where Tropical was precluded from making changes to tariff rules and notes on one day's notice even though they would have resulted in a reduction in the shipper's cost of carriage.

E. CSA

CSA filed the only comment in opposition to TMT's Application. It contends that the carriers can not show any competitive harm that would justify an exemption because they have both ICC and FMC-regulated tariffs. CSA contends that any harm to the carriers should be weighed against the shippers' interest in rate stability and protection from economic coercion.

In regard to the competitive disadvantage allegedly suffered by FMC-regulated carriers, CSA states that: "The concept of 'competitive disadvantage' requires that the carriers actually compete for the same cargo and provide the same or equivalent services." CSA concludes that the record before the Commission is inadequate to make an informed decision. Accordingly, CSA believes that the Commission should either deny the Application or set the matter down for hearing.

Discussion

Section 35 of the 1916 Act provides in pertinent part:

> The Federal Maritime Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to this Act or any specified activity of such persons from any requirement of the Shipping Act, 1916, or Intercoastal Shipping Act, 1933, where it finds that such exemption will not substantially impair effective regulation by the Federal Maritime Commission, be unjustly discriminatory, or be detrimental to commerce.

The justification for the Application here is similar to that used to support previous applications for exemptions from the requirement that individual rate reductions be filed on thirty days' notice. TMT and the carriers supporting its Application allege that the thirty-day notice requirement for changes in rules, regulations and notes that reduce the shipper's cost of carriage inhibits their ability to compete with carriers operating under ICC-regulated tariffs. In support of this contention, they have provided specific examples of the problems which have been caused by the 30-day notice requirement of the 1933 Act. The Commission is convinced on the basis of this material that TMT's application is justified.

The arguments raised by CSA in opposition to the Application are similar to those raised by CSA in previous exemption proceedings. Although CSA appears correct when it states that most carriers have both ICC and FMC-regulated tariffs, it does not necessarily follow that carriers can suffer no harm as a result of the 30-day notice requirement of the 1933 Act. The carrier's ability to shift cargo from one tariff to another may be limited by the needs and desires of the shippers served by the carrier. For example, the shipper may prefer to move its cargo under a port-to-port rate rather than a joint-through intermodal rate. In sum, there is no clear indication that carriers are misusing the exemptions that have been previously granted by the Commission and will misuse the exemption requested here. Contrary to CSA's view, the Commission is satisfied that the exemption will not substantially impair effective regulation by the Commission, be unjustly discriminatory, or detrimental to commerce.

The Commission concludes that TMT's Application meets the standards of section 35 of the 1916 Act. Accordingly, subject to the limitation described below, the Commission will grant TMT's Application for exemption.

Although the exemption will permit a carrier to make a change to a tariff rule, regulation or note affecting a large number of rate items, a carrier may not use the exemption to institute a general decrease in rates on one day's notice.[9] TMT has not requested an exemption from any of the provisions of the 1933 Act and the Commission's regulations that pertain to a general decrease in rates. The provisions in the 1933 Act that apply to a general decrease in rates include a requirement that any general decrease in rates be filed on sixty days' notice and time limits for disposition of the case if the matter is set down for hearing. Rule 67 of the Commission's Rules of Practice and Procedure requires the carrier to accompany any general decrease in rates with testimony and exhibits of such composition, scope and format that they will serve as the carrier's entire direct case in the event the matter is set down for hearing. The exemption does not relieve carriers from complying with those provisions.

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it has nonetheless reviewed the rule in terms of this Order and has determined that this rule is not a "major rule" as defined in Executive Order 12291 because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a

[9] Section 1 of the 1933 Act, 46 U.S.C. app. 843, defines a "general decrease in rates" as:

> * * * any change in rates, fares, or charges which will (A) result in a decrease in not less than 50 per centum of the total rate, fare, or charge items in the tariffs per trade of any common carrier by water in intercoastal commerce; and (B) directly result in a decrease in gross revenue of such carrier for the particular trade of not less than 3 per centum.

significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions.

List of Subjects in 46 CFR Part 550

Maritime carriers; Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553, sections 18, 35 and 43 of the Shipping Act, 1916, 46 U.S.C. app. 817, 833a and 841a, and section 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844, part 550 of title 46, Code of Federal Regulations, is amended as follows:

PART 550—[AMENDED]

1. The authority citation for part 550 continues to read as follows:

Authority: 5 U.S.C. 553, 46 U.S.C. app. 812, 814, 815, 817, 820, 833a, 841a, 843, 844, 845, 845a, 845b, and 847.

2. In section 550.1, a new paragraph (e) is added reading as follows:

§ 550.1 Exemptions.

* * * * *

(e) Carriers providing port-to-port transportation between the United States and Puerto Rico or the U.S. Virgin Islands, or between Puerto Rico and the U.S. Virgin Islands, may change on one day's notice any tariff regulation, rule or note that reduces the shipper's cost of transportation and may also file on one day's notice any new tariff regulation, rule or note that does not increase the shipper's cost of transportation; provided, however, that such carriers must comply with those provisions of the Intercoastal Shipping Act, 1933, and the Commission's regulations that pertain to any "general decrease in rates".

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-24264 Filed 10-8-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91-133; RM-7710]

Radio Broadcasting Services; Wickenburg, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 229A to Wickenburg, Arizona, as that community's second local FM broadcast service, in response to a petition for rule making filed on behalf of Circle S. Broadcasting Co., Inc. See 56 FR 22840, May 17, 1991. Coordinates used for Channel 229A at Wickensburg are 33-55-53 and 112-48-12, with a site restriction 7.8 kilometers (4.9 miles) southwest of the community. As Wickenburg is located within 320 kilometers (199 miles) of the Mexico border, concurrence of the Mexican government to this proposal was obtained. With this action, the proceeding is terminated.

DATES: *Effective Dates:* November 18, 1991.

The window period for filing applications for Channel 229A at Wickenburg, Arizona, will open on November 19, 1991, and close on December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-133, adopted September 25, 1991, and released October 3, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Wasington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Channel 229A at Wickenburg.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-24219 Filed 10-8-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 90-601; RM-7531]

Radio Broadcasting Services; Lenwood, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 245A to Lenwood, California, as that community's third local FM broadcast service, in response to a petition for rule making filed on behalf of Desert Broadcasting. See 55 FR 51930, December 18, 1990. Coordinates used for Channel 245A at Lenwood are 34-52-30 and 117-06-48. Since Lenwood is located within 320 kilometers (199 miles) of the Mexico border, concurrence of the Mexican government was obtained. With this action, the proceeding is terminated.

DATES: *Effective Dates:* November 18, 1991.

The window period for filing applications for Channel 245A at Lenwood, California, will open on November 19, 1991, and close on December 19, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-601, adopted September 20, 1991, and released October 3, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 245A at Lenwood.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-24220 Filed 10-8-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[Docket No. 91-178; RM-7141]

Radio Broadcasting Services; Miami Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 230C for channel 230C1 at Miami Beach, Florida, and modifies the license for Station WLVE(FM) to specify operation on the higher class channel, at the request of Gilmore Broadcasting Corporation. See 56 FR 29616, June 28, 1991. Channel 230C can be allotted to Miami Beach in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates are North Latitude 25-47-18 and West Longitude 80-07-48. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 18, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-178, adopted September 20, 1991, and released October 3, 1991. The full text of this commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [AMENDED]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by removing Channel 230C1 and adding Channel 230C at Miami Beach.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-24223 Filed 10-8-91; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 91-182; RM-7733]

Radio Broadcasting Services; Liberty, KY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 254C3 for Channel 254A at Liberty, Kentucky, and modifies the construction permit for Station WKDO(FM) to specify operation on the higher class channel, at the request of Carlos Wesley. See 56 FR 30524, July 3, 1991. Channel 254C3 can be allotted to Liberty in compliance with the Commission's minimum distance separation requirements at the site specified in the construction permit, with a site restriction of 2.2 kilometers (1.4 miles) southeast of the community. The coordinates are North Latitude 37-18-22 and West Longitude 84-55-02. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 18, 1991.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 91-182, adopted September 20, 1991, and released October 3, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452-1422, 1714 21st Street NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio Broadcasting

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kentucky, is amended by removing Channel 254A and adding Channel 254C3 at Liberty.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91-24225 Filed 10-8-91; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

Federal Register
Vol. 56, No. 196
Wednesday, October 9, 1991

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

RESOLUTION TRUST CORPORATION

12 CFR Part 1620

Restrictions on the Purchase of Assets From the Resolution Trust Corporation

AGENCY: Resolution Trust Corporation.

ACTION: Proposed rule and request for comments.

SUMMARY: The Resolution Trust Corporation ("RTC") is hereby seeking comment on proposed regulations pursuant to the requirement of the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990 ("Thrift and Bank Fraud Act" or "Act"). The statute requires that assets held by the RTC in the course of liquidating federally-insured savings associations not be sold to persons who, in ways specified in the Act, contributed to the demise of such savings associations. The proposed rule is intended to accomplish the Congressional directive by implementing a self-certification process that is a prerequisite to the sale of assets by the RTC. The proposed regulation provides definitions that effectuate and/or clarify the intent of Congress regarding the scope of the statutory prohibitions.

DATES: Comments must be submitted on or before November 8, 1991.

ADDRESSES: Written comments regarding the proposed rule should be addressed to John M. Buckley, Jr., Executive Secretary, Resolution Trust Corporation, 801 17th Street, NW., Washington, DC 20434–0001. Comments may be hand delivered to room 314 on business days between 9 a.m. and 5 p.m. Comments may also be inspected in the Public Reading Room, 801 17th Street, NW., between 9 a.m. and 5 p.m. on business days. (Phone number: 202–416–6940; FAX number: 202–416–4753).

FOR FURTHER INFORMATION CONTACT: Carl Gold, Legal Division, 202–416–7327; David Wiley, Asset and Real Estate Management Division, 202–416–7136. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

The RTC was created by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIERREA") to liquidate federally-insured savings associations and the assets of those associations. The RTC's organic statute is the Federal Home Loan Bank Act, particularly 12 U.S.C. 1441a ("FHLB Act"). In addition, when acting as conservator or receiver for a savings association, the RTC has the same powers and duties as does the Federal Deposit Insurance Corporation ("FDIC") pursuant to sections 11 through 13 of the Federal Deposit Insurance Act ("FDI Act"), 12 U.S.C. 1821–23. The Thrift and Bank Fraud Act affects asset sales by the RTC in two regards. First, it amended the FDI Act provisions that are applicable to the RTC to proscribe sales by the RTC of assets of particular savings associations to persons who, by committing certain specified felonies, caused a loss to the particular savings associations. On May 10, 1991, the RTC published a directive (Circular 10100.14) that implemented the Thrift and Bank Fraud Act's amendments to the FDI Act regarding RTC asset sales. The directive prescribed a certification that must be made before the RTC will sell an asset.

The second relevant portion of the Thrift and Bank Fraud Act is section 2526(c), which amended the RTC's organic statute, specifically 12 U.S.C. 1441a(f). Section 2526(c) requires the RTC to promulgate regulations to prohibit the sale of an asset of a savings association, to, and/or the use of RTC financing to purchase an asset that is in the hands of the RTC by, persons who, in a non-criminal way, contributed to the demise of that savings association. As prescribed by the Act, there are four basic factual situations in which a person will be barred from purchasing an asset of an RTC-controlled savings association, and/or barred from using RTC financing to purchase one or more assets. The following is a brief summary of those situations; the proposed regulations must be consulted for specific legal requirements.

Restrictions on Asset Sales by the RTC

First, if the prospective purchaser, or related entity, as defined in the proposed regulation, has defaulted to the savings association on one or more obligations aggregating more than $1 million, *and* the purchaser or related entity has been found to have engaged in fraud in connection with these obligations, RTC financing would not be provided. Consistent with the Act, the proposed regulation would not prohibit a cash sale in this circumstance.

Second, if a person participated in a material way, as defined in the proposed regulation, in transactions that resulted in a substantial loss to a savings association, the person would not, using any source of payment or financing, be permitted to purchase an asset of that association from the RTC.

Third, if a person has, by federal regulatory action, been removed from or barred from participating in the affairs of an association that is under RTC control, the person would not, using any source of payment or financing, be permitted to purchase an asset of that association from the RTC.

Finally, if a prospective purchaser or related entity has demonstrated a pattern or practice of defalcation, as defined by the proposed regulation, regarding obligations to an RTC controlled association, the prospective purchaser would be barred from purchasing an asset or assets of that association from the RTC, regardless of the intended source of financing or payment.

The Act provides one exception to the above-described restrictions, which is reflected in the proposed regulation. That is, the restrictions would be lifted if in the course of the sale or transfer of an asset, the purchaser or transferee's obligations to the savings association or to the RTC were resolved or settled. In addition, as a matter of regulatory authority, the RTC intends to limit the possible retroactive effect of the regulation. That is, no sale or seller financing arrangement would be rescinded or revoked based upon the provisions of the regulation if there was a legally enforceable contract of sale between the purchaser and the RTC at the time the regulation becomes effective.

It has been noted that the proposed regulation follows the Act closely. Accordingly, the RTC does not by this proposed regulation intend to impose broad limitations on those who can purchase assets from the RTC. This

regulatory treatment in no way implies that the RTC will provide seller financing to a prospective purchaser who is not creditworthy.

As noted above, the RTC in promulgating this proposed regulation is following a statute that dictates most of the terms of the regulation. The regulation has been drafted in a way that is intended to be susceptible to self-certification by prospective purchasers. In addition, the RTC has found it necessary to define several terms that are not defined by the Act. In developing these definitions, the RTC has, to the extent that it can do so and remain consistent with the intent of Congress, drawn upon its experience in the implementation of its contractor ethics regulations, 12 CFR 1606. Where the definitions are strictly prescribed by the Thrift and Bank Fraud Act, the RTC has maintained those definitions. It is the intent of Congress that assets not be sold to persons or entities that they control, or are controlled by, if such persons or entities significantly contributed to the demise of a savings association.

Where neither the Act nor the contractor ethics regulations provided a workable definition, the RTC has attempted to develop a definition or to implement the Act in a way that is consistent with this Congressional intent.

Initial Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, the following initial regulatory flexibility analysis is hereby provided:

1. Reasons, objectives, and legal bases underlying the proposed regulations: These elements have been discussed elsewhere in the Supplementary Information.

2. Small entities to which the proposed regulations would apply. Individuals, and businesses which could qualify as small businesses under various statutory and regulatory standards, may be affected by these provisions. This regulation applies equally to all entities of any size. The RTC has been given no discretion in this matter by Congress.

3. Impact of the proposed regulation on small businesses: Persons or entities that seek to purchase assets from the RTC do so on a strictly voluntary basis. The only burden imposed by this regulation is the completion of a certification form. This will not require the use of professional skills or the preparation of special reports or records. The RTC seeks comments on alternative methods of compliance, or reporting requirements.

4. Overlapping or conflicting federal rules. There are no known federal rules which overlap, duplicate, or conflict with the proposed regulation.

5. Alternatives to the proposed regulation. The RTC has not identified alternatives that would be less burdensome to small businesses and yet effectively accomplish the objectives of the proposed regulation. There is no obviously less burdensome method of implementing the statutory mandate than a self-certification process. However, comment is specifically solicited on this issue.

List of Subjects in 12 CFR Part 1620

Asset disposition, Savings associations.

For the reasons set out in the preamble, the RTC proposes to add part 1620 to title 12, chapter XVI of the Code of Federal Regulations, to read as follows:

PART 1620—RESTRICTIONS ON SALE OF ASSETS BY THE RESOLUTION TRUST CORPORATION

Sec.

Authority: 12 U.S.C. 1441a(f); 12 U.S.C. 1441a(b)(12).

§ 1620.1 Purpose and scope.

(a) The Resolution Trust Corporation is prohibited from selling assets that were or are held by savings associations that have been placed under the conservatorship or receivership of the Resolution Trust Corporation to certain persons who profited or engaged in wrongdoing at the expense of those savings associations, or seriously mismanaged those savings associations.

(b) The restrictions of this part apply only when there is a connection between a savings association that now holds or formerly held one or more assets, and the prospective purchaser whose conduct injured that specific savings association. The restrictions apply even though the assets are no longer owned by the savings association that the prospective purchaser injured. Provided, that the restrictions shall not apply to sales of securities backed by pools of assets which may include assets of such savings association. This part does not establish a general prohibition against the sale of assets of savings associations under the control of the Resolution Trust Corporation to a prospective purchaser who may have injured one or more savings associations other than the savings association(s) whose assets the purchaser seeks to purchase.

§ 1620.2 Definitions.

(a) *Corporation* means the Resolution Trust Corporation in its corporate capacity.

(b) *Key Official* means an officer, managing or general partner, or director of an entity, or an individual who, acting individually or in concert with one or more entities or individuals, owns or controls 25 percent or more of the ownership of an entity, or otherwise controls the entity's management or policies.

(c) *Person* includes an individual, or an entity with a legally independent existence, including, without limitation, a trustee; the beneficiary of a least a 25 percent share of the proceeds of a trust; a partnership; a corporation; an association; a society; or other organization or institution.

(d) *RTC* means the Resolution Trust Corporation as corporation, as conservator, or as receiver, as the context indicates.

§ 1620.3 Restrictions on the sale of assets by the RTC in conjunction with a loan or extension of credit.

(a) Neither the Corporation, nor a savings association that is under the conservatorship or receivership of the RTC, may, in selling one or more assets of a savings association that was or is under the conservatorship or receivership of the RTC, provide a loan, advance, or other extension of credit, to a person if—

(1) That person, or a key official of that person, has defaulted, or has been a key official of a partnership or a corporation, which defaulted on, one or more obligations in the aggregate amount of more than $1,000,000 to the savings association which owned or owns the asset(s); and

(2) The person or its key official has been determined by a court or administrative tribunal to have engaged in, or is subject to a pending judicial or administrative action brought by the RTC or a component of the government of the United States, or any state, alleging fraudulent activity in connection with any such obligation.

(b) It shall be a violation of paragraph (a) of this section for a person under such circumstances to purchase, using a loan, advance, or other extension of

credit provided by the Corporation or such savings association, one or more assets of a subject savings association.

(c) For purposes of paragraph (a) of this section, a person or its key official is considered to have defaulted on an obligation only if the person or its key official has failed to comply with the terms of of the loan or other obligation to such an extent that the property securing the obligation is foreclosed upon. Paragraph (a) of this section does not apply to the failure to satisfy an unsecured obligation.

(d) The restrictions in paragraph (a) of this section do not apply if the sale or transfer of an asset resolves or settles, or is part of the resolution or settlement of, obligations owed by the person or its key official(s) to the savings association whose assets are being sold, or to the Corporation.

§ 1620.4 Restrictions on the sale of assets by the RTC regardless of method of financing.

(a) Neither the Corporation, nor a savings association that is under its conservatorship or receivership, may sell one or more assets of a savings association that was or is under the conservatorship or receivership of the RTC, to any person if the person or any key official—

(1) Has participated, as an officer or director of the same savings association, or as an affiliate of that savings association, if a material way in one or more transactions that resulted in a loss of more than $50,000 to that savings association, taking into account any net proceeds from the sale of collateral; or

(2) Has been removed from, or prohibited from participating in the affairs of, the savings association whose asset(s) is (are) being sold, pursuant to any final enforcement action by a Federal banking agency (defined at 12 U.S.C. 1813(q)); or

(3) Has demonstrated a pattern or practice of defalcation regarding obligations to the savings association whose asset(s) is (are) being sold.

(b) The restrictions of paragraph (a)(1) of this section shall not apply if the sale or transfer of an asset resolves or settles, or is part of the resolution or settlement of, obligations owed by the person or its key official(s) to the savings association whose assets are being sold, or to the Corporation.

(c) For purposes of paragraph (a) of this section, *affiliate* is defined as any company that controls, is controlled by, or is under common control with, another company.

(d) For purposes of paragraph (a) of this section, a *loss* is a net loss where a savings association has written off a receivable, either because it was required to do so by an examiner, auditor or regulator, or elected to write off the receivable using applicable accounting principles.

(e) For purposes of paragraph (a) of this section, an individual or entity has participated in a material way in a transaction that caused a loss to a savings association if the individual or entity has been found, in a final determination by a court or administrative tribunal, or is alleged, in a judicial or administrative action brought by the RTC or by any component of the government of the United States or of any state—

(1) To have violated any law, regulation, or order issued by a Federal banking agency, or breached or defaulted on a written agreement with a Federal banking agency, or breached or defaulted on a written agreement (including, but not limited to, a contract for goods or services, note, deed of trust, mortgage, loan agreement), between a savings association and the individual or entity; or

(2) To have engaged in an unsafe or unsound practice in conducting the affairs of the savings association; or

(3) To have breached a fiduciary duty owned to that savings association.

(f) For purposes of paragraph (a) of this section, a person or its key official shall have demonstrated a pattern or practice of defalcation regarding obligations to a savings association if the person of key official has engaged in more than one action evidencing an intent to cause a loss to the savings association whose assets the person or key official intends to purchase.

(g) It shall be a violation of this part for any such person to purchase an asset that the RTC or a savings association under its conservatorship or receivership is prohibited from selling if circumstances exist that would cause any of the restrictions enumerated in paragraph (a) of this section to apply.

§ 1620.5 Certain asset sales unaffected by this part.

The effectiveness of this part shall not be grounds for rescission or revocation of the sale of one or more assets, or the withholding of seller financing by the RTC, if a legally enforceable contract of sale and/or agreement for seller financing was in effect prior to [INSERT THE DATE ON WHICH THE FINAL REGULATION BECOMES EFFECTIVE].

§ 1620.6 Certification required.

The Corporation, or a savings association under its conservatorship or receivership, may not sell any asset, and no person shall buy any asset from the RTC or a savings association under its conservatorship or receivership, unless the person shall have certified, under penalty of perjury, with notice that a false certification may lead to punishment under 18 U.S.C. 1001 and 18 U.S.C. 1621, that none of the restrictions in this part applies to the sale of that asset.

By order of the Board of Directors.

Dated at Washington, DC this 1st day of October, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91-24171 Filed 10-8-91; 8:45 am]

BILLING CODE 6714-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[GL-174-89]

RIN 1545-AN47

Sale of Seized Property

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that provide guidance relating to requests for the sale of seized property under section 6335(f) of the Internal Revenue Code (the "Code"). Section 6236(g) of the Technical and Miscellaneous Revenue Act of 1988 amended section 6335 of the Code of inserting subsection (f), which allows the owner of any property seized by levy to request that the Service sell the property within 60 days, or within any longer period specified by the owner. The proposed regulations set forth the person to whom a request for sale of property should be addressed and what information should be included in a request.

DATES: Written comments and requests to speak (with an outline of oral comments) at the public hearing must be received by December 3, 1991. See notice of hearing published elsewhere in this issue of the **Federal Register**.

ADDRESSES: Send comments and requests to speak (with an outline of oral comments) at the public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R (GL-174-89), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Kevin B. Connelly, (202) 535–9682 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed regulations amending the Procedure and Administration Regulations (26 CFR part 301) pursuant to section 6335 of the Code. The proposed regulations reflect the amendment of section 6335 by section 6236 (g) of the Technical and Miscellaneous Revenue Act of 1988 (Pub. L. No. 100–647, 102 Stat. 3342).

Explanation of Provisions

Section 6236(g) of the Technical and Miscellaneous Revenue Act of 1988 amended section 6335 of the Internal Revenue Code by inserting new subsection (f), which allows the owner of any property seized by levy to request that the Service sell the property within 60 days, or within any longer period specified by the owner. The Secretary must comply with such a request unless a determination is made that compliance would not be in the best interests of the United States, and the owner of the property is notified within the 60-day period (or longer period, as specified by the owner) that such a determination has been made.

The proposed regulation provides that a request for the sale of property must be made in writing to the group manager of the revenue officer whose signature is on Levy Form 668–B. Often, the taxpayer will know this information through prior communication with the Internal Revenue Service. If the owner does not know the group manager's name or address, the owner may send the request to the revenue officer, marked for the attention of his or her group manager. The request must include: (1) The name, current address, current home and work telephone numbers and any convenient times to be contacted, and the taxpayer identification number of the owner making the request; (2) a description of the seized property that is the subject of the request; (3) a copy of the notice of seizure, if available; (4) the period within which the owner is requesting that the property be sold; and (5) the signature of the owner or duly authorized representative.

The proposed regulation also provides that the district director shall respond in writing to a request for sale of seized property as soon as practicable after receipt of such request and in any event within the period within which the owner of such seized property requested sale.

Effective date

These regulations are proposed to be effective with respect to requests made on or after [INSERT THE DATE THAT IS THIRTY DAYS AFTER THE DATE FINAL REGULATIONS ARE PUBLISHED IN THE Federal Register]. However, any reasonable request for the sale of seized property made after January 1, 1989, and before the effective date of the proposed regulations will be honored by the Internal Revenue Service.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. It also has been determined that section 553(b) of the Administrative Procedures Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests To Appear at the Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. A public hearing will be held on December 17, 1991. Notice of the time, place and date for the hearing and other details relating thereto is published elsewhere in this issue of the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Kevin B. Connelly, Office of the Assistant Chief Counsel (General Litigation), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Administrative practice and procedure, Alimony, Bankruptcy, Child support, Continental shelf, Courts, Crime, Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Investigations, Law enforcement, Oil pollution, Penalties, Pensions, Reporting and recordkeeping requirements, Statistics, Taxes.

Adoption of Addition to the Regulations

Accordingly, title 26, part 301 of the Code of Federal Regulations is proposed to be amended as follows.

PART 301—[AMENDED]

Paragraph 1. The authority citation for part 301 continues to read in part:

Authority: Section 7805, I.R.C. 1954; 68 Stat. 917; 26 U.S.C. 7805 * * *

Par. 2. Section 301.6335–1 is amended by adding a new paragraph (d) to read as follows:

§ 301.6335–1 Sale of seized property.

* * * * *

(d) *Right to request the sale of seized property*—(1) *In general.* The owner of any property seized by levy may request that the district director sell such property within 60 days after such request, or within any longer period specified by the owner. The district director must comply with such a request unless the district director determines that compliance with the request is not in the best interests of the Internal Revenue Service and notifies the owner of such determination within the 60 day period, or any longer period specified by the owner.

(2) *Procedures to request the sale of seized property*—(i) *Manner.* A request for the sale of seized property shall be made in writing to the group manager of the revenue officer whose signature is on Levy Form 668–B. If the owner does not know the group manager's name or address, the owner may send the request to the revenue officer, marked for the attention of his or her group manager.

(ii) *Form.* The request for sale of seized property within 60 days, or such longer period specified by the owner, shall include:

(A) The name, current address, current home and work telephone numbers and any convenient times to be contacted, and taxpayer identification number of the owner making the request;

(B) A description of the seized property that is the subject of the request;

(C) A copy of the notice of seizure, if available;

(D) The period within which the owner is requesting that the property be sold; and

(E) The signature of the owner or duly authorized representative. For purposes of these regulations, a duly authorized representative is any attorney, certified public accountant, enrolled actuary, or any other person permitted to represent the owner before the Internal Revenue

Service who is not disbarred or suspended from practice before the Internal Revenue Service and who has a written power of attorney executed by the owner.

(3) *Notification to owner.* The group manager shall respond in writing to a request for sale of seized property as soon as practicable after receipt of such request and in no event later than 60 days after receipt of the request, or, if later, the date specified by the owner for the sale.

Michael J. Murphy,

Acting Commissioner of Internal Revenue.

[FR Doc. 91–24337 Filed 10–8–91; 8:45 am]

BILLING CODE 4830–01–M

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26 CFR Part 301

[GL–174–89]

RIN 1545–AL47

Sale of Seized Property; Public Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing relating to requests for the sale of seized property under section 6335(f) of the Internal Revenue Code. Section 6236(g) of the Technical and Miscellaneous Revenue Act of 1988 amended section 6335 of the Internal Revenue Code by inserting subsection (f), which allows the owner of any property seized by levy to request that the Service sell the property within 60 days, or within any longer period specified by the owner.

DATES: The public hearing will be held on Tuesday, December 17, 1991, beginning at 10 a.m. Outlines of oral comments must be received by Tuesday, December 3, 1991.

ADDRESSES: The public hearing will be held in the Internal Revenue Building, Second floor, room 2615, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, [GL–174–89], room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Felicia A. Daniels of the Regulations Unit, Assistant Chief Counsel (Corporate), 202–566–3935, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 6335(f) of the Internal Revenue Code of 1986. The proposed regulations appear elsewhere in this issue of the **Federal Register.**

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on proposed regulations should submit not later than Tuesday, December 3, 1991, an outline of oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Building before 9:15 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 91–24336 Filed 10–8–91; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 55–91]

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice proposes to exempt a Privacy Act system of records from subsection (d) of the Privacy Act, 5 U.S.C. 552a. This system of records is the "Office of the Inspector General, Freedom of Information/Privacy Acts (FOI/PA) Records, (JUSTICE/OIG–003)." Records in this system may contain information which relates to official Federal investigations and matters of law enforcement of the Office of the Inspector General (OIG) pursuant to the Inspector General Act of 1978, 5 U.S.C. App., as amended by the Inspector General Act Amendments of 1988. Accordingly, where applicable, the exemptions are necessary to avoid interference with the law enforcement functions of the OIG. Specifically, the exemptions are necessary to prevent subjects of investigations from frustrating the investigatory process; preclude the disclosure of investigative techniques; protect the identities and physical safety of confidential sources and of law enforcement personnel; ensure the OIG's ability to obtain information from information sources; protect the privacy of third parties; and safeguard classified information as required by Executive Order 12356.

DATES: Submit any comments by November 8, 1991.

ADDRESSES: Address all comments to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Information Resources Management, Justice Management Division, Department of Justice, Washington, DC 20530 (room 1103, Chester Arthur Building).

FOR FURTHER INFORMATION CONTACT: Patricia E. Neely, (202) 514–6329.

SUPPLEMENTARY INFORMATION: In the notice section of today's **Federal Register,** the Department of Justice provides a description of the "Office of the Inspector General, Freedom of Information/Privacy Acts (FOI/PA) Records (JUSTICE/OIG–003)."

Pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have "a significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative practices and procedures, Courts, Freedom of Information Act, Privacy Act, and Government in the Sunshine Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend 28 CFR 16.75 by adding paragraphs (c) and (d) as set forth below.

Dated: September 6, 1991.

Harry H. Flickinger,

Assistant Attorney General for Administration.

PART 16—[AMENDED]

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. It is proposed to amend 28 CFR 16.75 (proposed to be added to 28 CFR at 56 FR 48469, Sept. 25, 1991), by adding paragraphs (c) and (d) to read as follows:

§ 16.75 Exemption of the Office of the Inspector General Freedom of Information/Privacy Acts (FOI/PA) Records System.

* * * * *

(c) The following system of records is exempted from 5 U.S.C. 552a(d).

(1) Office of the Inspector General, Freedom of Information/Privacy Acts (FOI/PA) Records (JUSTICE/OIG–003).

This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a (j)(2), (k)(1), and (k)(2). To the extent that information in a record pertaining to an individual does not relate to official Federal investigations and law enforcement matters, the exemption does not apply. In addition, where compliance would not appear to interfere with or adversely affect the overall law enforcement process, the applicable exemption may be waived by the Office of the Inspector General (OIG).

(d) Exemption from subsection (d) is justified for the following reasons:

(1) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could inform the subject of an investigation of an actual or potential criminal, civil, or regulatory violation of the existence of that investigation; of the nature and scope of the information and evidence obtained as to his activities; of the identity of confidential sources, witnesses, and law enforcement personnel; and of information that may enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law enforcement where they prevent the successful completion of the investigation, endanger the physical safety of confidential sources, witnesses, and law enforcement personnel, and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personal privacy of third parties. Finally, access to the records could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an impossible administrative burden by requiring investigations to be continuously reinvestigated.

[FR Doc. 91–24245 Filed 10–8–91; 8:45 am]
BILLING CODE 4410–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[BPD–366–P]

RIN 0938–AD01

Medicare Program: Clarification of Medicare's Accrual Basis of Accounting Policy

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This rule proposes to revise the Medicare regulations to clarify the concept of "accrual basis of accounting" to indicate that expenses must be incurred by a provider of health care services before Medicare will pay its share of those expenses. Our intention in publishing these proposed revisions is not to signify a change in policy but, rather, to incorporate into the regulations Medicare's longstanding policy regarding the circumstances under which we recognize, for the purposes of program payment, a provider's claim for costs for which it has not actually expended funds during the current cost reporting period.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on December 9, 1991.

ADDRESSES: Mail written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–366–P, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. In commenting, please refer to file code BPD–366–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately three weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION CONTACT: Anthony Coates, (301) 966–4515.

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SUPPLEMENTARY INFORMATION:

I. Background

Generally, under the Medicare program, health care providers not subject to prospective payment are paid for the reasonable costs of the covered items and services they furnish to Medicare beneficiaries. This policy pertains to all services furnished by providers other than inpatient hospital and certain inpatient routine skilled nursing facility services paid on a prospective payment basis. Section 1861(v)(1)(A) of the Social Security Act (the Act) defines reasonable cost as the cost actually incurred, excluding any cost unnecessary in the efficient delivery of needed health services. That section of the Act also provides that reasonable costs must be determined in accordance with regulations that establish the methods to be used and the items to be included for purposes of determining which costs are allowable for various types or classes of institutions, agencies, and services. In addition, section 1861(v)(1)(A) specifies that regulations implementing the principles of reasonable cost payment may provide for the use of different methods in different circumstances.

Implementing regulations at 42 CFR 413.24 establish the methods to be used and the adequacy of data needed to determine reasonable costs for various types or classes of institutions, agencies, and services.

Section 413.24(a) requires providers receiving payment on the basis of reasonable costs to maintain financial records and statistical data sufficient for the proper determination of costs payable under the program and for verification of costs by qualified auditors. The cost data are required to be based on an approved method of cost finding and on the accrual basis of accounting. Currently, § 413.24(b)(2) merely provides that under the accrual basis of accounting, revenue is reported in the period in which it is earned, regardless of when it is collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

Under the current definition of the accrual basis of accounting, some providers have claimed incurred costs without evidence of having incurred actual expenditures or the assurance that liabilities associated with accrued costs will ever be fully liquidated through an actual expenditure of funds. For example, under the terms of some provider employment contracts, nonprobationary employees are entitled to accumulate a certain number of sick leave days annually and carry forward a maximum accumulated amount of unused sick leave time. These sick leave days are typically vested (although not funded) but nevertheless are subject to forfeiture. That is, unused accumulated sick leave days are subject to redemption for cash if the employee retires, resigns, or is discharged in good standing, but may be forfeited if the employee is discharged for cause. In the latter case, under the current rule, some providers have sought Medicare payment for sick leave days for which the provider never became liable.

The lack of clarification in the regulations involving the accrual basis of accounting has already forced the Medicare program to settle approximately $4.0 million worth of accrued costs in sick leave, FICA taxes, deferred compensation, and unpaid mortgage interest expense cases. In one case alone, the sick leave costs amounted to $1.26 million.

We believe the proposed clarification to the regulations is the preferred alternative to the above-described condition that has resulted in the unwarranted payment of Federal trust funds before they are needed to pay the costs of providers' actual expenditures in furnishing health care to program beneficiaries.

Another alternative would be to forego incorporating in regulations our longstanding policy regarding the circumstances under which Medicare accepts a provider's claim for costs for which it has not actually expended funds during the current reporting period. We could continue to rely solely upon the generic definition of the accrual basis of accounting, whereby revenue is reported in the period it is earned, regardless of when it is collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid. The result of continuing this policy would be extremely costly to the Medicare program, as evidenced by the statistics cited above, and could be expected to affect other items of cost, the liabilities for which would no longer require liquidation. Deferred compensation alone could involve untold millions of dollars of accrued costs that the program could be forced to pay, even though the provider may not liquidate the liabilities on a current basis.

In summary, the lack of clarification to the regulations continues to impair HCFA's ability to defend against challenges to the regulations for accrued costs of vacation pay, FICA and other payroll taxes, owners' compensation, deferred compensation, pension plans, nonpaid workers; services, and unpaid mortgage interest, as well as other accrued costs.

II. Proposed Changes to the Regulations

As a result of these policies, as well as other problems that stem from our current definition of accrual basis of accounting, we are proposing to revise § 413.24. We are proposing to add a new paragraph to § 413.24 that describes the conditions under which certain accrued costs would be recognized for purposes of Medicare payment. Our intention is specifying these conditions is not to signify a change in policy but, rather, to incorporate into the regulations Medicare's longstanding policy regarding the circumstances under which we recognize, for the purposes of program payment, a provider's claim for costs for which it has not actually expended funds during the current cost reporting period. (See section 2305 of the Provider Reimbursement Manual (HCFA Pub. 15–1).) We believe this clarification would significantly contribute to the uniform application of our policies concerning recognizing accrued costs for Medicare payment and preclude misinterpretation of the policies in the future. Because we realize that we cannot anticipate every circumstance under which a provider of services may wish to claim an accrual of costs, our use of specific examples of limitations on the liquidation of liabilities is not to be construed as all-inclusive. For instance, Medicare does not recognize the accrual of costs for providing various forms of future benefits to an employee or an employee's beneficiaries and covered dependents during the years that the employee furnished the necessary service, unless the related liabilities are liquidated timely. The accrual of postretirement health benefits, for example, cannot be recognized unless the related liability for payment into a self-insurance fund (see section 2162.7ff of the Provider Reimbursement Manual), or for payment of a commercial health insurance premium is liquidated timely in accordance with section 2305 of the Provider Reimbursement Manual. Accordingly, in order for accrued costs to be recognized for Medicare payment, we are proposing the following requirements with respect to the liquidation of liabilities:

- Short-term liability (HCFA Pub. 15–1, section 2305).

A short-term liability must generally be liquidated within one year after the end of the cost reporting period in which the liability is incurred. However, we are proposing that an exception be made in cases in which the intermediary is furnished sufficient written justification, based upon documented evidence, for nonpayment within the one-year time limit. An extension, not to exceed three years beyond the cost reporting year in which the liability was incurred, could be granted for good cause including, but not limited to, insufficient cash flow and accounting errors in the receipt and processing of bills for the cost of goods and services.

- Vacation pay (HCFA Pub. 15–1, section 2146).

Under this proposal, if the provider's vacation policy is consistent for all employees, we would require that payment be made within the period provided for by that policy. A consistent policy is one in which no provision of the vacation pay plan discriminates in favor of certain positions or types of employees, such as supervisors, officers, stockholder-employees, or highly-paid personnel, other than on the basis of full-time as opposed to part-time. If the provider's vacation policy is not consistent for all employees, we would require that payment be made within two years after the close of the cost reporting period in which the liability is accrued. Otherwise, the accrued amount would be disallowed.

• All-inclusive paid days off (HCFA Pub. 15–1, section 2144.9).

The policy that is applicable to vacation pay, above, would also apply to all-inclusive paid days off (for example, total time off in a given period for unspecified occasions including illness, vacations, and family bereavement).

• FICA and other payroll taxes (HCFA Pub. 15–1, sections 2146.2C and 704.3)

We are proposing to establish in the regulations the basic principle for accrual of FICA and other payroll taxes in terms of how these taxes are handled in cases of vacation pay and nonpaid workers.

Under this proposal, the employer's share of FICA and other payroll taxes that the provider-employer becomes obligated to remit to governmental agencies would be recognized for program payment only during the cost reporting period in which payment upon which the tax is based is actually made to the employee. For example, no legal obligation exists for the provider-employer to withhold and to match employee contributions to FICA and to pay FICA taxes until such time as the employee is paid and the specific amount of liability known. Therefore, the employer's share of FICA taxes must be treated as costs only in the cost reporting period in which the employee is actually paid.

• Sick pay (HCFA Pub. 15–1, section 2144.8).

We are proposing that, if sick pay is vested and funded in a deferred compensation plan, liabilities related to the contributions to the fund would be liquidated in accordance with the policy stated above for a short-term liability. However, if the sick leave plan grants employees the right to demand cash payment for unused sick leave at the end of each year, we propose that the sick pay be includable in allowable costs, without funding, in the cost reporting period when it is earned.

• Compensation of owners (HCFA Pub. 15–1, section 906.4).

With regard to compensation of owners other than sole proprietors and partners (that is, employees, officers and directors owning stock in closely-held corporations or with a substantial ownership or equity in publicly-traded corporations, and certain employees of trusts), we are proposing that any related accrued liability be liquidated within 75 days after the close of the cost reporting period.

• Nonpaid workers (HCFA Pub. 15–1, section 704.5).

We are proposing that obligations incurred under a legally-enforceable agreement to remunerate an organization of nonpaid workers be discharged no later than the end of the provider's cost reporting period following the period in which the services were furnished.

• Deferred compensation (HCFA Pub. 15–1, section 2140).

We are proposing that liabilities related to contributions systematically made to a funding agency pursuant to a funded deferred compensation plan meeting the criteria described in section 2140 of HCFA Pub. 15–1 be liquidated in accordance with the policy stated above for a short-term liability. However, where the plan was not funded, reasonable provider payments made to employees under deferred compensation plans would be considered an allowable cost only during the cost reporting period in which actual payment to the participating employee is made.

• Self-Insurance (HCFA Pub. 15–1, section 2162.7).

We are proposing that accrued liability related to contributions under a self-insurance program that are systematically made to a funding agency, and which cover malpractice and comprehensive general liability, unemployment compensation, workers' compensation insurance losses, or employee health benefits, must meet the criteria described in section 2162.7ff of the Provider Reimbursement Manual and must be liquidated within 75 days after the close of the cost reporting period. Payments made after the 75th day would be deemed allowable in the reporting period paid, provided the total contributions made in that period do not exceed the amount prescribed by an independent actuary as necessary for the adequacy of the fund.

These changes to the regulations are necessary to ensure that providers are paid for their actual costs as intended under § 413.9(c)(3). This section states that the reasonable cost basis of payment contemplates that providers of services are to be paid the actual costs of providing quality care.

III. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 requires us to prepare and publish an initial regulatory impact analysis for any proposed rule that is likely to meet criteria for a "major rule". A major rule is one that would result in—

• An annual effect on the economy of $100 million or more;

• A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

• Significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed rule merely conforms regulations to present policies and practices. Since this proposed rule would not meet any of these criteria, this is not a major rule and a regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals, long term care facilities, and other providers to be small entities.

Our intention in this proposed rule is not to signify a change in policy but, rather, to incorporate in regulations our longstanding policy regarding the circumstances under which Medicare accepts a provider's claim for costs for which it has not actually expended funds during the current cost reporting period. Based on the provisions of this proposed rule, we have determined, and the Secretary certifies, consistently with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), that these proposed regulations would not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis has not been prepared.

Section 1102(b) of the Act requires the Secretary to prepare an initial regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area. We are not preparing a rural hospital impact analysis since we have determined, and the Secretary certifies, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals because this proposed rule merely conforms regulations to present policies and practices.

IV. Other Required Information

A. Paperwork Burden

This proposed rule does not impose information collection requirements. Consequently, it does not need to be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3511).

B. Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and, if we decide to proceed with a final rule, we will respond to the comments in the preamble of that rule.

List of Subjects in 42 CFR Part 413

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Nursing homes, Reporting and recordkeeping requirements, Rural areas, X-rays.

We are proposing to amend 42 CFR part 413 as set forth below:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833(a) and (n) 1861(v), 1871, 1881, and 1886 of the Social Security Act as amended (42 U.S.C. 1302, 1320 a-i, 1395f(b), 1395g, 1395(a) and (i), 1395x(v), 1395hh, 1395rr, and 1395ww)

2. Section 413.24 is amended by revising paragraph (b)(2), adding new paragraphs (b)(3) and (b)(4), redesignating paragraphs (c), (d), (e), (f), (g), and (h) as paragraphs (d), (e), (f), (g), (h), and (i), respectively, adding a new paragraph (c), and amending newly redesignated paragraph (e) by replacing all references to paragraphs (d)(1), (d)(2), and (d)(3) with references to paragraphs (e)(1), (e)(2), and (e)(3), respectively:

§ 413.24 Adequate cost data and cost finding.

* * * * *

(b) *Definitions*—* * *

(2) *Accrual basis of accounting.* As used in this part, the term *accrual basis of accounting* means that revenue is reported in the period in which it is earned, regardless of when it is collected; and an expense is reported in the period in which it is incurred, regardless of when it is paid.

(3) *All-inclusive paid days off benefit.* An all-inclusive paid days off benefit replaces other vacation and sick pay plans. It is a formal plan under which, based on actual hours worked, all employees accrue vested leave or payment in lieu of vested leave for any combination of types of leave, such as illness, medical appointments, holidays, and vacations.

(4) *Self-insurance.* Self-insurance is a means by which a provider independently or as part of a group undertakes the risk to protect itself against anticipated liabilities by providing funds in an amount equal to anticipated liabilities rather than by purchasing insurance coverage.

(c) *Recognition of accrued costs.*—(1) *Payment purposes.* Although Medicare recognizes the accrual of costs for which a provider has not actually expended funds during the current cost reporting period, for purposes of payment, Medicare does not recognize the accrual of costs unless the related liabilities are liquidated timely.

(2) *Example.* The accrual of postretirement health benefits cannot be recognized unless the related liability for payment to a self-insurance fund or for a commercial health insurance premium is liquidated timely.

(3) *Liquidation of liabilities.* For accrued costs to be recognized for Medicare payment, the following requirements must be met with respect to the liquidation of related liabilities:

(i) *A short-term liability.* (A) Except as provided in paragraph (c)(1)(i)(B) of this section, a short-term liability must be liquidated within one year after the end of the cost reporting period in which the liability is incurred.

(B) If the provider furnishes sufficient written justification (based upon documented evidence) to the intermediary for nonpayment of the liability within the one-year time limit, an extension, not to exceed there years beyond the cost reporting year in which the liability was incurred, may be granted for good cause. Good cause includes, but is not limited to, insufficient cash flow, and accounting error in the receipt and processing of bills for the cost of goods and services.

(ii) *Vacation pay and all-inclusive paid days off.* (A) If the provider's vacation policy, or its policy for all-inclusive paid days off, is consistent for all employees, liquidation of the liability must be made within the period provided for by that policy.

(B) If the provider's vacation policy, or its policy for all-inclusive paid days off, is not consistent for all employees, liquidation of the liability must be made within two years after the close of the cost reporting period in which the liability is accrued.

(iii) *Sick pay.* (A) If a sick leave is vested and funded in a deferred compensation plan, liabilities related to the contributions to the fund must be liquidated, generally, within one year after the end of the cost reporting period in which the liability is incurred. An extension, not to exceed three years beyond the cost reporting year in which the liability was incurred, may be granted for good cause if the provider furnishes sufficient written justification (based upon documented evidence) to the intermediary for nonpayment of the liability within the one-year time limit.

(B) Good cause includes, but is not limited to, insufficient cash flow and accounting error in the receipt and processing of

(C) If the sick leave plan grants employees the right to demand cash payment for unused sick leave at the end of each year, sick pay is includable in allowable costs, without funding, in the cost reporting period in which it is earned.

(iv) *Compensation of owners.* Accrued liability related to compensation of owners other than sole proprietors and partners must be liquidated within 75 days after the close of the cost reporting period in which the liability occurs.

(v) *Nonpaid workers.* Obligations incurred under a legally-enforceable agreement to remunerate an organization of nonpaid workers must be discharged no later than the end of the provider's cost reporting period following the period in which the services were furnished.

(vi) *FICA and other payroll taxes.* The provider's share of FICA and other payroll taxes that the provide becomes obligated to remit to governmental agencies may be included in allowable costs only during the cost reporting period in which payment upon which the tax is based is actually made to the employee. For example, no legal obligation exists for a provider-employer to pay FICA taxes until the employee is paid and the specific amount of liability known.

(vii) *Deferred compensation.* (A) Reasonable provider payments made under unfunded deferred compensation plans are included in allowable costs only during the cost reporting period in which actual payment is made to the participating employee.

(B) Accrued liability related to contributions to a funded deferred compensation plan must be liquidated within one year after the end of the cost

reporting period in which the liability is incurred. An extension, not to exceed three years beyond the cost reporting year in which the liability was incurred, may be granted for good cause if the provider furnishes sufficient written justification based upon documented evidence to the intermediary for non-payment of the liability within the one-year time limit. Good cause includes, but is not limited to, insufficient cash flow and accounting error in the receipt and processing of bills for the cost of goods and services.

(viii) *Self-Insurance.* Accrued liability related to contributions under to a self-insurance program that are systematically made to a funding agency and that cover malpractice and comprehensive general liability, unemployment compensation, workers' compensation insurance losses, or employee health benefits, must be liquidated within 75 days after the close of the cost reporting period. Payments made after the 75th day may be allowed in the cost reporting period paid, provided the total contributions made in that cost reporting period do not exceed the amount prescribed by an independent actuary as necessary for the adequacy of the fund.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: November 23, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: June 27, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91–24308 Filed 10–8–91; 8:45 am]

BILLING CODE 4120–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 65 and 72

RIN 3067–AB 66

National Flood Insurance Program; Identification and Mapping of Special Flood Hazard Areas and Procedures and Fees for Processing Map Changes

AGENCY: Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the National Flood Insurance Program (NFIP) regulations on identification and mapping of special hazard areas. The proposed rule would initiate a fee requirement for map revisions, similar to the current fee procedures for conditional Letters of Map Amendment (CLOMAs) and conditional Letters of Map Revision (CLOMRs), by establishing administrative and cost recovery procedures for the review and issuance of Letters of Map Revision (LOMRs) and map revisions requested to reflect changed flood hazards. This action is being undertaken to reduce expenses to the National Flood Insurance Program (NFIP) and will contribute to maintaining the NFIP as self-supporting.

Also, the proposed rule deletes the listing of initial fees and references to pre-authorized spending limits set forth in the current regulations at §§ 72.3 and 72.4 and substitutes language which provides for publication of fees and pre-authorized spending limits in a separate listing. This action is being undertaken to permit FEMA to adjust fees to accommodate the increased rates FEMA must pay for these activities and to eliminate the necessity of undertaking formal rulemaking solely for the purpose of adjusting fees. The listing of fees proposed to be effective through September 30, 1992, is published as a notice elsewhere in this **Federal Register** and will be finalized with the final rule. Under this proposed rule, the fees would be adjusted annually to provide for changes in the prevailing private sector labor rate upon which the fees are predicated. Revised fees will be published annually by August 1, as a notice in the **Federal Register,** to become effective at the beginning of each fiscal year beginning with FY 1993.

DATES: Comments must be received on or before December 9, 1991.

SEND COMMENTS TO: Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Federal Insurance Administration, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, telephone: (202) 646–2767.

SUPPLEMENTARY INFORMATION: These proposed amendments to the NFIP criteria for identification and mapping of special hazard areas are a result of a continuing reappraisal of the NFIP for the purposes of achieving greater administrative and fiscal effectiveness and encouraging sound flood plain management so that reductions in the loss of life and property and in disaster expenditures can be realized.

Establishment of Fee System for Revisions

FEMA receives a large number of requests for Letters of Map Revision (LOMRs) and map revisions resulting from the placement of fill and the completion of stream channelizations, the construction of bridges and culverts, or other flood control projects, such as levees. These projects are typically limited in scope and are frequently effected solely to reduce flood risk to a limited area of the floodplain proposed for development and to offer relief from flood insurance purchase requirements of Public Law 93–234 (87 Stat. 975), codified as sections 4012a(a) and 4012a(b) of 42 U.S.C. or to secure financing or other benefits. Thus, to reduce expenses to the NFIP, FEMA is proposing a reimbursement procedure to allow for a partial recovery of certain costs associated with these actions.

Revisions intended to show a reduced flood hazard resulting from a publicly-sponsored project which was constructed primarily to reduce the flood hazard to insurable structures in identified flood hazard areas in existence prior to the date of commencement of construction of the flood control project are not subject to this reimbursement procedure. Likewise, revisions to correct an error or other deficiency in FFMA's mapping are not subject to the fee reimbursement procedures described herein.

Under this rule, an initial fee, the amount determined by the type of flood control project, would be required of those seeking a LOMR or map revision before any review commences. The initial fee represents the minimum engineering review and administrative processing costs for a LOMR or map revision based on the type of project. The initial fee does not include costs for labor and materials associated with the cartographic processing and preparation of a map revision since these costs will vary depending on the number of map panels affected and the complexity of the changes being incorporated.

In the case of a map revision, FEMA will estimate the additional costs of cartographic preparation and processing of the revised map and will notify the requestor of those anticipated costs. Prior to initiating the map revision, FFMA will bill and collect these costs from the requestor. The requestor will not be charged for printing or distributing the revised map or for other incidental changes in the map not related to the specific request.

If it is determined that the actual cost associated with the review and

processing of a LOMR or map revision will exceed the amount remitted for the initial fee, the requestor will be billed and will be required to remit payment prior to receiving FEMA's final determination. Funds collected from this fee initiative will be deposited to the National Flood Insurance Fund since it is the source of funding for this service.

FEMA has determined that the costs associated with the technical review of requests for LOMRs and map revisions vary based on the type of project involved. In addition, the review costs are generally higher for requests that contain insufficient technical data and require additional data submittals by the requestor. It was determined that, for each category of project, there are certain minimum review and processing elements common to all requests. These minimum review and processing costs were used to develop the initial fees for the various projects.

The LOMRs and map revisions were first categorized by the type of project to be reviewed. Each category was then examined and minimum review and processing times were determined for engineering review, administration, word processing, and quality control. The basic processing time common to each type of project was then converted to a dollar amount using the direct labor rates, overhead, and fee, which FEMA pays for these services. Administrative expenses to be recovered also include the cost of publishing notices of changes in base flood elevations in the local newspaper and in the **Federal Register**, when required. The costs to be recovered are those of the technical engineering and administrative review of projects, and, for map revisions, the cost of cartographic preparation and processing.

The cartographic costs for a map revision vary depending on the number of map panels affected and on the complexity of the changes to be incorporated. Therefore, these costs are calculated on a case-by-case basis and have not been included in the initial fee calculations. Cartographic costs include preparation of the revised map and report, administration, word processing, quality control, and materials.

The primary component of the cost of processing a LOMR or map revision is the prevailing private sector labor rate charged to FEMA for the conduct of the engineering review and cartographic preparation and processing. Since this rate will vary due to inflation and other economic fluctuations, FEMA proposes to publish the initial fees, pre-authorized spending limits, and the established hourly rate which are to be effective through September 30, 1992, as a notice else where in this **Federal Register**, to be finalized with a final rule. Beginning with calendar year 1992, a notice of change in the initial fees, the pre-authorized spending limits, and the hourly rate will be published annually by August 1, as a notice in the **Federal Register**, so as to be effective the first day of each subsequent fiscal year.

In most cases, FEMA anticipates that the yearly fee adjustments will be based primarily on fluctuations in the prevailing private sector labor rate charged to FEMA. Because such periodic fee adjustments are necessary to permit FEMA to recoup its expenses and would not reflect a change in the underlying fee structures, FEMA believes there should be no need to issue a proposed notice of fees annually prior to adopting the annual updated fee schedule.

Public comments are invited on this proposed approach, which would permit FEMA to make annual fee adjustments for fluctuations in the prevailing private sector labor rate without soliciting prior public comment on these adjustments. In the future, prior public comment would only be solicited if FEMA were to make a substantive change in the method by which the fees are calculated.

FEMA has determined, based upon an Environmental Assessment, that this proposed rule will not have significant impact upon the quality of the human environment. As a result, an Environmental Impact Statement will not be prepared. A finding of no significant impact is included in the formal docket file and is available for public inspection and copying at the Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

This proposed rule will not have a significant economic impact on a substantial number of small entities and, hence, has not undergone a regulatory flexibility analysis.

This proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 27, 1981, and, hence, no regulatory analysis has been prepared.

FEMA has determined that this rule amendment does not contain a collection of information as described in section 3504(h) of the Paperwork Reduction Act.

List of Subjects in 44 CFR Parts 65 and 72

Flood insurance, Reporting and recordkeeping requirements.

Accordingly, it is proposed to amend 44 CFR chapter I, subchapter B, as follows:

PART 65—IDENTIFICATION AND MAPPING OF SPECIAL HAZARD AREAS

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 65.4 [Amended]

2. Section 65.4 is proposed to be amended by adding a new paragraph (c) to read as follows:

* * * * *

(c) Requests for revisions to effective Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs) to reflect the changed flood hazard resulting from the filling of more than a single lot within the flood plain or from the construction of channel alterations, bridges, culverts, levees or similar measures for the primary purpose of reclaiming flood plain lands for future development are subject to the reimbursement procedures described in part 72 of this subchapter. Revisions to reflect a reduced flood hazard resulting from a publicly-sponsored project constructed primarily to reduce the flood hazard to insurable structures which were in existence prior to commencement of construction of the flood-control project, or to correct deficiencies in existing flood insurance mapping will not be subject to the reimbursement procedures.

3. Part 72 is proposed to be revised, as follows:

PART 72—PROCEDURES AND FEES FOR PROCESSING MAP CHANGES

Sec.

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978; E.O. 12127.

§ 72.1 Purpose of part.

The purpose of this part is to provide administrative and cost recovery procedures for the engineering review and administrative processing associated with the issuance of conditional Letters of Map Amendment (CLOMAs), conditional Letters of Map Revision (CLOMRs), Letters of Map Revision (LOMRs), and map revisions, including cartographic costs, based on manmade alterations within the flood plain, such as the placement of fill, modification of a channel, or

construction of a new bridge, culvert, levee, or similar measure. These reimbursement procedures do not apply to the following:

(a) LOMAs, LOMRs, or map revisions granted to correct map deficiencies or to include the effects of natural changes within the areas of special flood hazard.

(b) LOMRs granted to remove single residential lots or structures which are not part of a new subdivision from the area of special flood hazard based solely on the placement of fill outside of the regulatory floodway.

(c) CLOMRs, LOMRs or map revisions resulting from publicly-sponsored projects constructed primarily to reduce the flood hazard to insurable structures in identified flood hazard areas which were in existence prior to commencement of the construction of the flood control project.

§ 72.2 Definitions.

(a) Except as otherwise provided in this part, the definitions set forth in part 59 of this subchapter are applicable to this part.

(b) For the purpose of this part, a CLOMA is FEMA's comment on a proposed structure that would, upon construction, be located on existing natural ground above the base flood elevation on a portion of a legally defined parcel of land which is partially inundated by the base (100-year) flood.

(c) For the purpose of this part, a CLOMR is FEMA's comment on a proposed project that would, upon construction, result in a modification of the area of special flood hazard through the placement of fill, or would affect the hydrologic and/or hydraulic characteristics of a flooding source, and thus result in the modification of the existing regulatory floodway, the effective base flood elevations, or the area of special flood hazard.

(d) For the purpose of this part, a LOMR is FEMA's modification to an effective flood insurance map based on the placement of fill, or other physical measures which have been implemented that support changes in the area of special flood hazard, base flood elevations, or floodway. The LOMR officially revises the Flood Insurance Rate Map (FIRM) and/or Flood Boundary Floodway Map (FBFM) and includes a description of the modifications. In addition, the LOMR is generally accompanied by an annotated copy of the affected FIRM and/or FBFM panel(s).

(e) For the purpose of this part, a map revision is FEMA's redrawing and republication of an effective flood insurance map based on the placement of fill, or other physical measures which have been implemented that support changes in the area of special flood hazard, base flood elevations, or floodway.

§ 72.3 Initial fee schedule.

(a) For CLOMAs and for CLOMRs, an initial fee, subject to the provisions of § 72.4, shall be paid by the requestor prior to the initiation of FEMA's review. The initial fee represents the minimum number of hours required to review each type of project, multiplied by an hourly rate, which is based on the prevailing private sector labor rate and the administrative costs of processing a CLOMA or CLOMR. The initial fees for CLOMAs and CLOMRs for the categories listed below are contained in the notice published elsewhere in this **Federal Register**. Beginning in calendar year 1992, revisions to these fees are to be published annually by August 1, as a notice in the **Federal Register**, so as to be effective the first day of each subsequent fiscal year:

(1) Single lot CLOMA
(2) Single lot CLOMR (based strictly on the proposed placement of fill outside the regulatory floodway)
(3) Multi-lot/Subdivision CLOMA
(4) Multi-lot/Subdivision CLOMR (based strictly on the proposed placement of fill outside the regulatory floodway)
(5) Review of new hydrology
(6) New bridge or culvert (no channelization)
(7) Channel modifications only
(8) Channel modification and new bridge or culvert
(9) Levees, berms, or other structural measures
(10) Structural measures on alluvial fans

(b) For LOMRs or map revisions, whether or not they are in followup to a CLOMR issued by FEMA, an initial fee for all categories listed below, subject to the provisions of § 72.4, will be paid by the requestor prior to the initiation of FEMA's review. There are no fees for LOMAs or for single-lot LOMRs which are not part of a new subdivision, and are based strictly on the placement of fill outside of the regulatory floodway. The initial fee represents the minimum number of hours required to review each type of project, multiplied by an hourly rate, which is based on the prevailing private sector labor rate and the administrative costs of processing a LOMR or map revision. The initial fee does not include the costs of cartographic preparation and processing of a map revision. The initial fees for LOMRs and map revisions in the categories listed below are contained in the notice published elsewhere in this **Federal Register**. Beginning in calendar year 1992, revisions to these fees are to be published annually by August 1, as a notice in the **Federal Register**, so as to be effective the first day of each subsequent fiscal year:

(1) Multi-lot/Subdivision LOMR based strictly on the placement of fill outside the regulatory floodway
(2) New bridge or culvert (no channelization)
(3) Channel modifications only
(4) Channel modification and new bridge or culvert
(5) Levees, berms, or other structural measures
(6) Structural measures on alluvial fans

(c) For projects involving combinations of the actions listed under paragraphs (a) or (b) of this section, the initial fee shall be that charged for the most expensive action of those that compose the combination.

§ 72.4 Submittal/payment procedures and FEMA response.

(a) Initial fees shall be submitted with the request for FEMA review and processing of CLOMAs and CLOMRs, LOMRs, and map revisions.

(b) Initial fees must be received by FEMA before the review will be initiated for any CLOMA, CLOMR, LOMR, or map revision. The initial fee is non-refundable upon initiation of FEMA's review.

(c) Following completion of FEMA's review for any CLOMA, CLOMR, LOMR, or map revision, the requestor will be billed at the established hourly rate for any actual costs exceeding the initial fee incurred during the review. The rate is published in a notice in this **Federal Register**. The rate will be revised on a fiscal year basis using the most current fiscal data available and, beginning with calendar year 1992, the revised hourly rate will be published annually by August 1, as a notice in the **Federal Register**, so as to be effective the first day of each subsequent fiscal year.

(1) In the event that the revision request results in a map revision, the requestor will be notified and billed for costs of cartographic preparation and processing of the revised map. This work will not be initiated until FEMA has received payment. This amount will be calculated on a case by case basis and will reflect the cost to FEMA for cartographic preparation and processing of the revised map. The cost of reprinting and distributing the revised Flood Insurance Rate Map (FIRM) and/or Flood Boundary Floodway Map (FBFM) will be borne by FEMA.

(2) Requestors of CLOMAs, CLOMRs, LOMRs and map revisions will be notified of the anticipated total cost if the total cost of processing the request, including estimated costs for cartographic preparation and processing of a map revision, will exceed the pre-authorized spending limits. The limits vary according to the type of review performed and are based on the established hourly rate. The pre-authorized spending limits are listed in a notice published elsewhere in this **Federal Register.** These spending limits will be revised on an annual basis and published annually by August 1, as a notice in the **Federal Register,** so as to be effective the first day of each fiscal year.

(3) In the event that processing costs are anticipated to exceed the pre-authorized spending limits, processing of the request will be suspended pending FEMA receipt of written approval from the requestor to proceed.

(d) The entity that applies to FEMA through the local community for review will be billed for the cost of the review. The local community incurs no financial obligation under the reimbursement procedure set forth in this part as a result of transmitting the application by another party to FEMA.

(e) Payment of both the initial fee and final cost shall be by check or money order payable to the National Flood Insurance Program and must be received by FEMA before the CLOMA, CLOMR, or LOMR will be issued, or before the cartographic processing will begin for a map revision.

(f) For CLOMA requests, FEMA shall:

(1) Notify the requestor within 30 days as to the adequacy of the submittal, and

(2) Within 60 days of receipt of adequate information and fee, provide comment to the requestor on the proposed project.

(g) For CLOMR, LOMR and for map revision requests, FEMA shall:

(1) Notify the requestor within 60 days as to the adequacy of the submittal, and

(2) Within 90 days of receipt of adequate information and fee, provide comment to the requestor on the proposed project, issue a LOMR or, in the case of a map revision, notify the requestor of the results of the review and the estimate of the costs of the cartographic preparation and processing, and

(3) Within 90 days of completion of the engineering review and receipt of the payment for the total cost of the review and processing of the map revision, including cartographic costs, issue a preliminary copy of the revised FIRM and/or FBFM for review and comment by the community and the requestor.

§ 72.5 Exemptions.

Federal, State, and local governments and their agencies shall be exempt from fees for projects they sponsor if the Administrator determines or the requesting agency certifies that the particular project is for public benefit and primarily intended for flood loss reduction to insurable structures in identified flood hazard areas which were in existence prior to the commencement of construction of the flood control project. Projects undertaken primarily to protect planned floodplain development are not eligible for fee exemption.

§ 72.6 Unfavorable response.

(a) A request for a CLOMA or CLOMR may be denied or the determination may contain specific comments, concerns, or conditions regarding a proposed project or design and its impacts on flood hazards in a community. A requestor is not entitled to any refund if the determination contains such comments, concerns, or conditions, or if the request is denied. A requestor is not entitled to any refund if the requestor is unable to provide the appropriate scientific or technical documentation or to obtain required authorizations, permits, financing, etc., for which the CLOMA or CLOMR was sought.

(b) A request for a LOMR or map revision may be denied or may not revise the FIRM and/or FBFM in the manner or to the extent desired by the requestor. A requestor is not entitled to any refund if the revision is denied or if the LOMR or map revision action does not revise the map specifically as requested.

§ 72.7 Resubmittals.

Any resubmittal of a CLOMA, CLOMR, LOMR, or map revision request more than 90 days after FEMA notification that the request has been denied or after the review has been terminated because of insufficient information or other reasons will be treated as an original submission and subject to all submittal payment procedures described in § 72.4, including the initial fee. The procedure of § 72.4, including the initial fee, will also apply to any resubmitted request (regardless of when it is submitted) if the project on which the request is based has been significantly altered in design or scope other than as necessary to respond to comments, concerns, or other findings made by FEMA regarding the original submission.

In addition, when a LOMR or map revision request is made as a follow-up to a previously issued CLOMR, the procedure of § 72.4 and the appropriate initial fee, as referenced in § 72.3(c), will apply when the as-built conditions differ from the proposed conditions on which the issuance of the CLOMR was based.

Dated: September 23, 1991.

C.M. "Bud" Schauerte,

Federal Insurance Administrator.

[FR Doc. 91-23953 Filed 10-8-91; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL MARITIME COMMISSION

46 CFR Part 550

[Docket No. 91-42]

Tariff Filing Notice Requirements; Domestic Offshore Trades; Exemption Under Section 35 of the Shipping Act, 1916

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Maritime Commission proposes to amend its regulations governing the publishing, filing and posting of tariffs in domestic offshore commerce. This amendment to part 550 would exempt carriers providing port-to-port service in the domestic offshore trades from the 30-day notice requirements of section 2 of the Intercoastal Shipping Act, 1933. The proposed exemption would permit such carriers to publish on one day's notice any change in existing tariff matter that does not result in an increased cost to the shipper and any new tariff matter that results in a decreased cost to the shipper. Carriers will still be required to comply with those provisions of the Intercoastal Shipping Act, 1933, and the Commission's regulations that pertain to any "general decrease in rates."

DATES: Comments due November 8, 1991.

ADDRESSES: Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573-0001, (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573-0001, (202) 523-5740.

SUPPLEMENTARY INFORMATION: Section 2 of the Intercoastal Shipping Act, 1933 ("1933 Act"), 46 U.S.C. app. 844, requires carriers in the domestic offshore trades to file on thirty days' notice any new or changed tariff matters, even if it

decreases the shipper's cost of transportation. Ocean carriers operating in the foreign commerce of the United States are not subject to this restriction. Section 8(d) of the Shipping Act, 1984, *id.* 1707, provides that a change in an existing rate that results in a decreased cost to the shipper may become effective upon filing. Moreover, water carriers filing joint-through rates with the Interstate Commerce Commission ("ICC") may file new or reduced rates on one day's notice (49 CFR 112.39(h)(1)).

The Federal Maritime Commission ("FMC" or "Commission") has granted several exemptions to the thirty day notice requirement to permit carriers serving between the contiguous United States and Puerto Rico, the U.S. Virgin Islands or Hawaii to compete with carriers that are not subject to that requirement. *Matson Navigation Co., Inc.—Application for Section 35 Exemption,* _____ F.M.C. _____, 24 S.R.R. 1518 (1989); *Tariff Filing Periods—Exemption,* _____ F.M.C. _____, 24 S.R.R. 1604 (1989); *Application of Sea-Land Service Inc. For Exemption Under Section 35 of the Shipping Act, 1916,* _____ F.M.C. _____, 25 S.R.R. 660 (1990); and *Tropical Shipping & Construction Co. Ltd.—Application for Section 35 Exemption,* _____ F.M.C. _____, 25 S.R.R. 1471 (1991). By separate document issued this date, we have also granted the application in *Trailer Marine Transport Corporation—Application for Section 35 Exemption,* P3–91.

The Commission believes that the exemptions referred to above have benefited both shippers and carriers. Shippers benefit because carriers can respond more rapidly to their needs and desires; carriers benefit because they are able to move quickly to meet changes filed by competitors.

The Commission is therefore of the opinion that it may be appropriate to grant a single exemption for all carriers in the domestic offshore trades that would supersede the above exemptions and extend their provisions to all domestic offshore trades. As a result, the Commission proposes to amend its regulations governing the publishing, filing and posting of tariffs in domestic offshore commerce pursuant to section 35 of the Shipping Act, 1916 ("1916 Act"), 46 U.S.C. app. 833a,[1] to exempt carriers from the 30-day tariff filing requirement of section 2 of the 1933 Act. The exemption would permit carriers in the FMC-regulated domestic offshore trades to publish on one day's notice any change in existing tariff matter, including rates, charges, regulations, rules and notes, that does not result in an increased cost to the shipper and any new tariff matter that results in a decreased cost to the shipper. Carriers will still be required to comply with those provisions of the 1933 Act and the Commission's regulations that pertain to any "general decrease in rates".

Although the Commission, as an independent regulatory agency, is not subject to Executive Order 12291, dated February 17, 1981, it has nonetheless reviewed the rule in terms of this Order and has determined that this rule is not a "major rule" as defined in Executive Order 12291 because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovations, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Federal Maritime Commission certifies, pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small government jurisdictions.

List of Subjects in 46 CFR Part 550

Maritime carriers; Reporting and recordkeeping requirements.

Therefore, pursuant to 5 U.S.C. 553, sections 18, 35 and 43 of the Shipping Act, 1916, 46 U.S.C. app. 817, 833a, and 841a, and section 2 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 844, part 550 of title 46, Code of Federal Regulations is proposed to be amended as follows:

PART 550—[AMENDED]

1. The authority citation for part 550 continues to read as follows:

Authority: 5 U.S.C. 553, 46 U.S.C. app. 812, 814, 815, 817, 820, 833a, 841a, 843, 844, 845, 845a, 845b, and 847.

2. In § 550.1 paragraph (b) is revised to read as follows:

§ 550.1 Exemptions.

(a) * * *

(b) Carriers engaged in the transportation by water of passengers or property on the high seas or the Great Lakes on regular routes from port to port between Alaska, Hawaii, Territory, District or possession of the United States and any other State, Territory, District or possession of the United States, or between places in the same Territory, District, or possession, may publish on one day's notice any change in existing tariff matters that does not result in an increased cost to the shipper and any new tariff matter that results in a decreased cost to the shipper. This exemption shall not apply to any decrease which is part of a "general decrease in rates" as defined by section 1 of the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 843.

§ 550.1 [Amended]

3. Section 550.1, paragraphs (c), (d), and (e) are removed.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91–24263 Filed 10–8–91; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–285, RM–7811]

Radio Broadcasting Services; Honolulu, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Christian Broadcasting Association proposing the substitution of Channel 238C for Channel 238C1 at Honolulu, Hawaii, and modification of its license for Station KAIM(FM) to specify the higher class channel. Channel 238C can be allotted to Honolulu in compliance with the Commission's minimum distance separation requirements with a site restriction of 26.0 kilometers (16.2 miles) west, in order to accommodate petitioner's desired transmitter site. The coordinates are North Latitude 21–23–42 and West Longitude 158–05–55. In

[1] Section 35 of the 1916 Act provides in pertinent part:

The Federal Maritime Commission, upon application or on its own motion, may by order or rule exempt for the future any class of agreements between persons subject to this Act or any specified activity of such persons from any requirement of the Shipping Act, 1916, or Intercoastal Shipping Act, 1933, where it finds that such exemption will not substantially impair effective regulation by the Federal Maritime Commission, be unjustly discriminatory, or be detrimental to commerce.

accordance with § 1.420(g) of the Commission's Rules, we shall not accept competing expressions of interest or require the petitioner to demonstrate the availability of an additional equivalent channel for use by interested parties.

DATES: Comments must be filed on or before November 25, 1991, and reply comments on or before December 10, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Clifford M. Harrington, Matthew P. Zinn, Fisher, Wayland, Cooper and Leader, 1255 23rd Street, NW., suite 800, Washington, DC 20037–1125. (Counsel for Christian Broadcasting Association).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202)634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–285, adopted September 25, 1991, and released October 3, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–24218 Filed 10–8–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–283, RM–7807]

Radio Broadcasting Services; George West, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by G & W Radio seeking the allotment of Channel 228C3 to George West, Texas, as the community's second local FM service. Channel 228C3 can be allotted to George West in compliance with the Commission's minimum distance separation requirements with a site restriction of 12.0 kilometers (7.5 miles) southwest to avoid a short-spacing to vacant Channel 281A, George West. The coordinates for Channel 228C3 are North Latitude 28–15–46 and West Longitude 98–12–24. Since George West is located within 320 kilometers (199 miles) of the U.S.-Mexican border, concurrence by the Mexican government has been solicited.

DATES: Comments must be filed on or before November 25, 1991, and reply comments on or before December 10, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lee J. Eidelberg, Esq., Executive Centre at Hooks Lane, 8 Reservoir Circle, suite 105, Baltimore, Maryland 21208 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–283, adopted September 20, 1991, and released October 3, 1991.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1714 21st Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–24217 Filed 10–8–91; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 91–284, RM–7814]

Radio Broadcasting Services; Independence, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Benett Kessler, permittee of Station KDAY(FM), Channel 292A, Independence, California, proposing the substitution of Channel 223B for Channel 292A and modification of her permit to specify the higher powered, non-adjacent channel. In the event other parties express an interest in the use of the Class B channel, petitioner advised that Channel 288B is also available for allotment to Independence. As a result of the availability of an additional equivalent class of channel at Independence, and in accordance with the provisions of § 1.420(g)(2) of the Commission's Rules, other expressions of interest in the use of Channel 223B at Independence will not be entertained. Coordinates used for Channel 223B at Independence are 36–48–56 and 118–08–36. Coordinates for Channel 288B at Independence are 36–51–24 and 118–10–45.

DATES: Comments must be filed on or before November 25, 1991, and reply comments on or before December 10, 1991.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Rebecca L. Dorch, Esq., Bryan, Cave, McPheeters &

McRoberts, 700—13th Street, NW., suite 700, Washington, DC 20005–3960.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 91–284, adopted September 25, 1991, and released October 3, 1991. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, Downtown Copy Center, (202) 452–1422, 1714 21st St., NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Michael C. Ruger,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 91–24224 Filed 10–8–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 80

RIN 1018–AB15

Program Requirements, Federal Aid in Sport Fish and Federal Aid in Wildlife Restoration Acts

AGENCY: Department of the Interior, Fish and Wildlife Service.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking to revise the requirements for participation in the grant-in-aid programs authorized by the Federal Aid in Wildlife Restoration Act and the Federal Aid in Sport Fish Restoration Act.

DATES: This withdrawal is effective October 9, 1991.

FOR FURTHER INFORMATION CONTACT: Columbus Brown, Chief, Division of Federal Aid (703) 358–2156.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 1990, the U.S. Fish and Wildlife Service published a proposed rule in the **Federal Register** (55 FR 13166) on proposed revisions to the requirements for participation in the grants-in-aid programs authorized by the Federal Aid in Wildlife Restoration Act and the Federal Aid in Sport Fish Restoration Act. However, the U.S. Fish and Wildlife Service has decided to withdraw these proposed revisions for further study of the policy issues involved. It is planned to issue another Notice of Proposed Rulemaking to revise the Federal Aid program requirements, and to provide additional opportunity for public comment on the proposed changes to these requirements. Comments received on the previous Proposed Rulemaking will be considered in the development of the subsequent proposed revisions.

List of Subjects in 50 CFR Part 80

Fish, Grant programs—natural resources, Reporting and recordkeeping requirements, Signs and symbols, and Wildlife.

Authority: 16 U.S.C. 669i; 16 U.S.C. 777i and 18 U.S.C. 701.

Dated: September 23, 1991.

Bruce Blanchard,

Acting Director.

[FR Doc. 91–24209 Filed 10–8–91; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 658

[Docket No. 910930–1230]

RIN 0648–AE34

Shrimp Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA proposes to amend the regulations that implement the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP) to modify, temporarily, the boundary of the Tortugas shrimp sanctuary to reduce the area closed to trawl fishing. This action would enable fishermen to harvest marketable-sized shrimp during specified periods from three small areas that otherwise would be closed.

DATES: Written comments must be received on or before November 8, 1991.

ADDRESSES: Comments should be sent to and copies of the Draft Environmental Assessment/Regulatory Impact Review may be obtained from Michael E. Justen, Southeast Region, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, 813–893–3161.

SUPPLEMENTARY INFORMATION: The shrimp fishery is managed under the FMP and its implementing regulations at 50 CFR part 658 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Under the FMP, the Director, Southeast Region, NMFS (Regional Director), may modify by no more than 10 percent the geographical scope of the Tortugas shrimp sanctuary specified at 50 CFR 658.22 after (1) consultation with the Gulf of Mexico Fishery Management Council (Council), (2) consideration of specified criteria, and (3) determination that benefits may be increased or adverse impacts decreased by the modification.

The primary purpose of establishing the sanctuary was to protect small shrimp and allow them to attain a larger more valuable size prior to harvest. The FMP stipulates that, prior to any modification of the sanctuary, NMFS will monitor and assess the impacts of the closure and advise the Council of its findings. The Council may also consider the advice of its Shrimp Advisory Panel regarding the findings. When the sanctuary was partially opened in 1983/84, NMFS determined that harvestable populations of shrimp occur periodically within a small portion of the sanctuary—a fact strongly supported by public testimony. Fishermen contend that shrimp from within this portion of the sanctuary migrate to untrawlable areas and are unavailable to the fishery. Poor recruitment of shrimp to the Tortugas fishery has resulted in 5 consecutive years of poor production and economic loss to the adjacent shrimp ports. As identified in the FMP, poor recruitment in the shrimp fishery is more a function of environmental forces than of overfishing. Opening areas of the sanctuary containing all sizes of shrimp is consistent with optimum yield because it will allow shrimp fishermen

to obtain, on a temporary basis, a more valuable catch per unit of effort.

The Regional Director, after consulting with the Council and considering the criteria for modifying the sanctuary, determined that small portions of the sanctuary that periodically contain harvestable shrimp should be opened for varying lengths of time during the period April 11, 1992, through September 30, 1992. The areas to be opened are less than 10 percent of the geographical scope of the sanctuary. These openings will increase the benefits to fishermen by optimizing the yield of shrimp. This temporary geographic modification is consistent with Objective 1 of the FMP because it provides temporary economic relief to the stressed fishermen while continuing to optimize the yield of shrimp recruited to the fishery.

The areas to be opened and their periods of opening in this proposed rule are identical to the areas and periods opened in 1990 and 1991. They were selected to avoid conflict between lobster trap and shrimp trawl fishermen and are in accord with a local agreement between these two groups of fishermen. This proposed rule would formalize that agreement and make it apply to trawl fishermen not otherwise privy to it, such as trawl fishermen from other areas who may fish seasonally in the area of the Tortugas shrimp sanctuary.

The three areas proposed to be opened are along the edge of the Tortugas shrimp sanctuary north of the Marquesas Keys from northeast of Smith Shoal Light to New Ground Shoal Light (see Figure 1 at 50 CFR 658.22). The middle area of approximately 25 square nautical miles would be open to trawling from April 11, 1992, through September 30, 1992. The western area of approximately 5 square nautical miles would be open from April 11, 1992, through July 31, 1992. The eastern area of approximately 33 square nautical miles would be open from May 26, 1992, through July 31, 1992. These areas and time frames will allow fishermen to harvest marketable-size shrimp from areas that would otherwise be closed while still allowing trap fishermen to harvest spiny lobster from areas customarily available to them.

Endangered Species Impacts

A consultation was conducted in accordance with section 7 of the Endangered Species Act for similar openings of the Tortugas shrimp sanctuary in 1989. An additional section 7 consultation was conducted in 1990 on the affects of the shrimp fishery on endangered or threatened species, such as sea turtles. Those consultations concluded that neither the openings of the Tortugas shrimp sanctuary nor the shrimp fishery would jeopardize the continued existence of any listed species or result in adverse modification of critical habitat of such species. The conclusion with respect to the affects of the shrimp fishery was conditioned on the continued applicability of the sea turtle conservation regulations which include the requirements for the use of turtle excluder devices in shrimp trawls. These regulations remain applicable. Therefore, the conclusion remain valid.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has initially determined that this proposed rule is consistent with the national standards and other provisions of the Magnuson Act and other applicable law.

The Council prepared a regulatory impact review (RIR) for this proposed rule. Based on the RIR, the Assistant Administrator determined that the rule is not major under E.O. 12291 because it would not have an annual effect on the economy of $100 million or more; would not result in an increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and would not result in significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities because the geographical area affected by the rule is small and, as a result, the number of shrimp trawlers affected in the Gulf-wide fishery is not substantial. As a result, a regulatory flexibility analysis was not prepared.

The Council prepared an environmental assessment (EA) for this proposed rule that discusses the impact on the environment as a result of this rule. A copy of the EA is available and comments on it are requested (see ADDRESSES).

Amendment 1 to the FMP authorizes the Regional Director, under specified conditions and restrictions, to modify the boundaries of the Tortugas shrimp sanctuary, as is being done in this rule. When Amendment 1 was approved, a determination was made that such modifications would be consistent to the maximum extent practicable with the approved coastal zone management program of Florida, the only state affected by this rule. Consequently, a new consistency determination under the Coastal Zone Management Act is not required.

This proposed rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 658

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: October 2, 1991.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 658 is proposed to be amended as follows:

PART 658—SHRIMP FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 658 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 658.22, effective from April 11, 1992, through September 30, 1992, the existing text is designated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 658.22 Tortugas shrimp sanctuary.

* * * * *

(b) The provisions of paragraph (a) of this section notwithstanding,

(1) Effective from April 11, 1992, through September 30, 1992, that part of the Tortugas shrimp sanctuary seaward of a line connecting the following points is open to trawl fishing: from point T at 24°47.8'N. latitude, 82°01.0'W. longitude to point U at 24°43.83'N. latitude, 82°01.0'W. longitude (on the line denoting the seaward limit of Florida's waters); thence along the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11439, to point V at 24°42.55'N. latitude, 82°15.0'W. longitude; thence north to point W at 24°43.6'N. latitude, 82°15.0'W. longitude (see figure 1).

(2) Effective from April 11, 1992, through July 31, 1992, that part of the Tortugas shrimp sanctuary seaward of a line connecting the following points is open to trawl fishing: from point W to point V, both points as specified in paragraph (b)(1) of this section, to point G, as specified in paragraph (a) of this section (see Figure 1).

(3) Effective from May 26, 1992, through July 31, 1992, that part of the Tortugas shrimp sanctuary seaward of a line connecting the following points is open to trawl fishing: from point F, as specified in paragraph (a) of this section, to point Q at 24°46.7′N. latitude, 81°52.2′W. longitude (on the line denoting the seaward limit of Florida's waters); thence along the seaward limit of Florida's waters, as shown on the current edition of NOAA chart 11439, to point U and north to point T, both points as specified in paragraph (b)(1) of this section (see Figure 1).

[FR Doc. 91–24250 Filed 10–8–91; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 56, No. 196
Wednesday, October 9, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Revised Land and Resource Management Plan for the Caribbean National Forest and Luquillo Experimental Forest; Municipalities of Luquillo, Fajardo, Ceiba, Naguabo, Las Piedras, Canovanas, and Rio Grande, Puerto Rico

AGENCY: Forest Service, USDA.

ACTION: Revised notice; correction of comment period.

SUMMARY: This notice corrects the comment period identified in the notice of intent, published in the Federal Register of September 18, 1991, (56 FR 47182–47184), from 45 days to 90 days. On page 47183, third column, paragraph one, last sentence, is corrected to read as follows: Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

FOR FURTHER INFORMATION CONTACT: Ricardo Garcia, Planning Staff Officer; (809) 766–5335.

Dated: September 27, 1991.

R.B. Erickson,

Deputy Regional Forester.

[FR Doc. 91–24286 Filed 10–8–91; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; Eddie Haak; Order Denying Permission To Apply For or Use Export Licenses

In the matter of: Eddie Haak, Bos Straat 74, 9180 (St. Niklaas) Belsel, Belgium, Respondent.

On May 19, 1989, Eddie Haak (Haak) was convicted of violating section 2410(b) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.) app. 2401–2420 (1991)) (EAA).[1] Section 11(h) of the EAA provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of a violation of the EAA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1991)) (the Regulations), for a period of up to 10 years from the date of conviction. In addition, any export license issued pursuant to the EAA in which such a person has any interest at the time of his conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the EAA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use export license issued pursuant to, or provided by, the EAA and the Regulations and shall also determine whether to revoke any export license previously issued to such a person. Having received notice of Haak's conviction for violating the EAA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Haak permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on May 19, 1999. I have also decided to revoke all export licenses issued pursuant to the EAA in which Haak had an interest at the time of his conviction.

Accordingly, it is hereby Ordered:

I. All outstanding individual validated licenses in which Haak appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Haak's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until May 19, 1999, Eddie Haak, Bos Straat 74, 9180 (St. Niklaas) Belsel, Belgium, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, or that is otherwise subject to the Act and Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodity or technical data exported or to be exported from the United States, in whole or in part, or that is otherwise subject to the Act and the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization

[1] The EAA expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (1991)).

[2] Pursuant to the appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the EAA.

related to Haak by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (1) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until May 19, 1999.

VI. A copy of this Order shall be delivered to Haak. This Order shall be published in the Federal Register.

Dated: September 25, 1991.

Iain S. Baird,

Director, Office of Export Licensing.

[FR Doc. 91-24240 Filed 10-8-91; 8:45 am]

BILLING CODE 3510-DT-M

Action Affecting Export Privileges; Abdelkader Helmy Order Denying Permission To Apply for or Use Export Licenses

In the matter of: Abdelkader Helmy, 1115 St. Andrews Drive, El Dorado Hills, California 95630, Respondent.

On December 5, 1989, Abdelkader Helmy (Helmy) was convicted of violating section 38 of the Arms Export Control Act (12 U.S.C. 2778) (AECA). Section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401-2420 (1991)) (EAA),[1] provides that, at the discretion of the Secretary of Commerce,[2] no person convicted of a violation of section 38 of the AECA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 CFR parts 768-799 (1991)) (the Regulations), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person that any interest at the time of his conviction may be revoked.

Pursuant to sections 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the Regulations and shall also determine whether to revoke any export license previously issued to such a person. Having received notice of Helmy's conviction for violating the AECA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Helmy permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on December 5, 1999. I have also decided to revoke all export licenses issued pursuant to the EAA in which Helmy had an interest at the time of his conviction.

Accordingly, *It is Hereby Ordered:*

I. All outstanding individual validated licenses in which Hemly appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Helmy's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until December 5, 1999, Abdelkader Helmy, 1115 St. Andrews Drive, El Dorado Hills, California 95630, hereby is denied all privileges of participating, directly or indirectly in any manner or capacity, in any transaction involving any commodity or technical data exported or to be exported from the United States, in whole or in part, or that is otherwise subject to the Act and the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of any commodities or technical data, in whole or in part, exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any firm, corporation, or business organization related to Helmy by affiliation, ownership, control, or position of responsibility may also be subject to the provisions of this Order.

IV. As provided § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, in any these transactions.

[1] The EAA expired on September 30, 1990. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. 1701-1706 (1991)).

[2] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the EAA.

V. This Order is effective immediately and shall remain in effect until December 5, 1999.

VI. A copy of this Order shall be delivered to Helmy. This Order shall be published in the **Federal Register**.

Dated: September 25, 1991.

Iain S. Baird,

Director, Office of Export Licensing.

[FR Doc. 91-24239 Filed 10-8-91; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-570-813]

Preliminary Determination of Sales at Less Than Fair Value: Refined Antimony Trioxide From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: October 9, 1991.

FOR FURTHER INFORMATION CONTACT: Julie Anne Osgood or Carole Showers, Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC, 20230; telephone: (202) 377-0167 and 377-3217, respectively.

Preliminary Determination:

The Department preliminarily determines that refined antimony trioxide from the People's Republic of China ("PRC") is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended ("the Act") (19 U.S.C. 1673b). The estimated margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the publication of the notice of initiation on May 22, 1991 (55 FR 23549), the following events have occurred. On May 22, 1991, we sent a letter to the Embassy of the PRC and petitioners requesting that they address the issues of: (1) Whether we should continue to treat the PRC as a nonmarket economy country, or (2) whether available information would permit the Department to determine foreign market value under section 773(a) of the Act. On May 31, 1991, petitioners submitted comments concerning the treatment of the PRC as a nonmarket economy country for purposes of this investigation.

On June 10, 1991, the International Trade Commission ("ITC") made a preliminary determination that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports of such merchandise that are allegedly sold in the United States at less than fair value.

On June 17, 1991, counsel for China National Nonferrous Metals Import and Export Corporation ("CNIEC") requested that we limit our investigation to exports made by CNIEC because CNIEC's exports represent a large percentage of the exports to the United States. We denied this request because of the presumption of central control with respect to CNIEC and China National Metals Import and Export Corporation ("China Minmetals"), another PRC exporter of refined antimony trioxide. The Department viewed CNIEC and China Minmetals as presumptively constituting a "single exporter." Consistent with Department policy, we required that both CNIEC and China Minmetals report all their sales to the United States. On August 13, 1991, counsel for respondents requested that the Department not require the Stibium Minerals Refinery in Yiyang, Huan ("Yiyang") to provide factors of production information. We determined the Yiyang was a significant supplier of merchandise for export to the United States. Therefore, we sent a factors questionnaire to Yiyang.

In letters to the Department, petitioners have argued that (1) There are additional manufacturers in the PRC of refined antimony trioxide which is exported to the United States, (2) the Department should issue questionnaires to the additional PRC producers and to the exporters of those products, and (3) the Department must consider whether the two exporters identified in this investigation account for 60 percent of U.S. sales, pursuant to 19 CFR 353.42(b).

Respondents have indicated in letters to the Department that there are four joint ventures located in Southern China that exported refined antimony trioxide to Hong Kong and the Netherlands under license from the Guangdong Provincial Trade Administration during the period of investigation ("POI"). Respondents maintain that two of the companies do not know the final destination of the refined antimony trioxide after it is shipped to Hong Kong and that a third company ships to Hong Kong on the basis of a compensation trade project. The two companies which claim no knowledge of destination have submitted certified statements to that effect. Therefore, respondents argue that these companies' exports should be considered exports to third countries. Furthermore, respondents have argued that CNIEC and China Minmetals represent over 60 percent of the sales during the POI, and that the four joint ventures need not be included in the investigation to obtain adequate coverage.

We received comments from petitioners and respondents with respect to these issues on July 31, August 26 and 29, 1991, and August 23, 27 and 30, 1991, respectively.

As noted, two PRC joint venture companies submitted certifications indicating their lack of knowledge of the ultimate destination of their merchandise at the time of sale to Hong Kong trading companies. For this reason, the Department considers the sales by these two companies to be third country, as opposed to U.S. sales and, hence, not requiring a questionnaire response. The Department has no reason to believe that the third joint venture company's sales to the Netherlands are ultimately destined for the United States; thus we did not require the company that made those sales to respond to our questionnaire.

On September 11, 1991, the Department determined that, based on U.S. import statistics and respondents' export statistics for the POI, CNIEC and Minmetals account for most, if not all, imports from the PRC during the POI. Thus, we determined that it is reasonable to assume that any sales made by the fourth PRC joint venture company would have very little effect, if any, on our dumping calculations. Therefore, we have not issued a questionnaire to this PRC producer. Nor have we issued questionnaires to the Hong Kong exporters which purchased from any of the joint venture companies. (See Memorandum from Francis J. Sailer to Eric I. Garfinkel, dated September 11, 1991, on file in Room B-099 of the Main Commerce Building.)

On September 13, 1991, and September 18, 1991, Xikuangshan and Yiyang, respectively, submitted their domestic costs for raw material factor inputs, labor, and electricity. Respondents claim that prices for these inputs are not subject to state control. (See Foreign Market Value section below).

Separate Rates

In their August 20, 1991, submission and in subsequent filings with the Department, respondents have argued that separate, company-specific rates should be calculated in this investigation. As stated in the Final Determination of Sales at Less than Fair Value: Sparklers from the People's Republic of China ("Sparklers"), 56 FR 20588 (May 6, 1991), we will issue separate rates if a respondent can

demonstrate both a *de jure* and *de facto* absence of central control. Evidence supporting, through not requiring, a finding of *de jure* absence of central control would include: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; and (2) any legislative enactments devolving central control of export trading companies. Evidence supporting finding a *de facto* absence of central control with respect to exports would include: (1) Whether each exporter sets its own export prices independently of the government and other exporters; and (2) whether each exporter can keep the proceeds from its sales.

The Department questions whether it is appropriate to consider the issue of separate, company-specific rates for trading companies which are under the authority of the Ministry of Foreign Economic Relations and Trade ("MOFERT") and China's State Council. Further, because of its a strategic raw material, refined antimony trioxide is a category one product. Moreover, even if we were persuaded that under these circumstances CNIEC and China Minmetals could justify a claim for separate rates the evidence in the record does not support a finding that CNIEC and Minmetals are entitled to separate rates under the test articulated above. (For our analysis of the information in the record, *see* the staff memorandum dated October 3, 1991, on file in Room B–099 of the Main Commerce Building.)

Unlike earlier cases, where we found central control was devolving to local trading companies, with respect to production and exportation of refined antimony trioxide, it appears that central control is being reinstated or at least maintained. Cf. Preliminary Determination of Sales at Less than Fair Value Oscillating Fans and Ceilings Fans from the People's Republic of China , 56 FR 25664 (June 5, 1991) and Sparklers. Also, in contrast to earlier cases, refined antimony trioxide has floor prices that are being set either by MOFERT or the Chinese Refined Antimony Trioxide Industry. Therefore, the purposes of the preliminary determination, we have calculated a country-wide rate. However, we are seeking additional information from respondents with respect to this issue.

Scope of the Investigation

The product covered by this investigation is refined antimony trioxide (also known as antimony oxide) from the PRC. Refined antimony trioxide is a crystalline powder of the chemical formula Sb203, currently classifiable under subheading 2825.80.00 of the Harmonized Tariff Schedule (HTS). Refined antimony trioxide includes blends with organic or inorganic additives comprising 20 percent of less of the blend by volume or weight. Crude antimony trioxide (antimony trioxide having less than 98 percent Sb203) is excluded. Through the HTS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The period of investigation is November 1, 1990, through April 30, 1991.

Fair Value Comparisons

To determine whether sales or refined antimony trioxide from the PRC to the United States were made at less than fair value, we compared the United States price ("USP") to the foreign market value ("FMV"), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For China Minmetals, we based United States price on purchase price where sales were made directly to unrelated parties prior to the date of importation into the United States, in accordance with section 772(b) of the Act. We used purchase price as defined in section 772 of the Act, both because refined antimony trioxide was sold to unrelated purchasers in the United States prior to importation into the United States, and because exporter's sales price ("ESP") methodology was not indicated by other circumstances.

For CNIEC and China Minmetals, were sales to the first unrelated purchasers took place after importation into the United States, we based United States price on ESP, in accordance with section 772(c) of the Act.

We made on adjustments to United States price or FMV for selling expenses. To have made such an adjustment to FMV would have required an arbitrary division of the surrogate country producer's selling expenses into amounts for direct, indirect, and other general and administrative expenses. (See Foreign Market Value section below.) Alternatively, to reduce ESP for selling expenses without making corresponding adjustments to FMV would have resulted in an unfair and unreasonable inflation of any differences between ESP and FMV.

A. China Minmetals

For China Minmetals, we calculated both purchase price and ESP based on packed, FOB, CIF and EX–Dock prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, ocean freight, marine insurance, U.S. brokerage and handling, U.S. duty, and U.S. terminal charges. We did not make an adjustment for foreign inland insurance, as reported by respondent, because we were unable to obtain a value for this factor from either surrogate country.

B. CNIEC.

For CNIEC, we calculated ESP based on packed, ex-warehouse, FOB, or delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for foreign inland freight, ocean freight, marine insurance, U.S. duty, U.S. inland freight, U.S. drayage, and U.S. port charges. We did not make an adjustment for foreign inland insurance, again because we were unable to obtain a value for this factor from either surrogate country.

Foreign Market Value

Section 773(c)(1) of the Act provides that the Department shall determine FMV using a factors of production methodology if (1) the merchandise is exported from a nonmarket economy country, and (2) the information does not permit the calculation of FMV using home market prices, third country prices, or constructed value under section 773(a) of the Act.

In past cases (e.g., Final Determination of Sales at Less than Fair Value: Chrome-Plated Lug Nuts from the People's Republic of China, ("Lug Nuts") 56 FR 46153 (September 10, 1991) and Sparklers) and indeed in every case conducted by the Department, the PRC has been treated as a nonmarket economy country.

In *Lug Nuts*, we recognized that for certain inputs into the production process, market forces may be at work despite the fact that the exporting country may otherwise be considered a nonmarket economy. Specifically, in *Lug Nuts*, we determined whether particular inputs were market-driven by analyzing the extent to which each factor input is state-controlled.

As a result of the final decision in *Lug Nuts* with respect to input prices, respondents in this investigation, Xikuangshan Antimony Trioxide Refinery ("Xikuangshan") and Yiyang, have claimed that the prices of raw material, labor, and energy inputs are not subject to state control. In this regard, respondents have submitted all input costs for the record.

Petitioners argue that while the Department used an actual producer's cost for steel and chemicals in *Lug Nuts*, this methodology would be inappropriate for the producers of refined antimony trioxide. Petitioners argue that there is no evidence in the record to suggest that a single factor of production in the manufacture of refined antimony trioxide in the PRC is obtained at a cost which reflects free market prices.

We agree with petitioners that for purposes of this preliminary determination, we do not have sufficient information to determine whether there is a lack of state control with respect to Xikuangshan and Yiyang's input costs. However, because Lug Nuts was only recently decided, we are issuing an additional questionnaire to allow respondents the opportunity to submit information with respect to their input prices.

Accordingly, the Department has preliminarily determined FMV on the basis of factors of production utilized in producing the subject merchandise, valued in market economy countries, as discussed below.

Surrogate Country

Section 773(c) of the Act requires the Department to value the factors of production, to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country, and that are significant producers of comparable merchandise. The Department has determined that Bolivia and Thailand are the only two countries that fulfill both requirements outlined in the statute. We have determined that in terms of economic development, Bolivia and Thailand are, overall, equally comparable to the PRC. Also, both countries are significant producers of crude antimony trioxide, a comparable product to the merchandise produced in China.

We were not able to obtain all factor prices required from either Bolivia or Thailand. Therefore, we have used the values for the factors of production from both countries.

Data on the values of the factors of production were obtained from the U.S. Embassy in Bolivia and the published, publicly available source, "Foreign Trade Statistics of Thailand." Where appropriate, the factor values were inflated to POI levels using wholesale price indices published by the International Monetary Fund.

To value antimony concentrate, the main input into refined antimony trioxide, we have used a POI average of prices for the Chinese concentrate traded internationally as reported in the London Metals Bulletin ("LMB"). The LMB lists three different prices for antimony concentrates. We have used the LMB price for Chinese antimony concentrates, as best information, because this most accurately reflects the impurity levels of the antimony concentrate used by respondents. Information was not available that would have allowed us to adjust the LMB prices for non-Chinese material to account for the different levels of impurities. Should such information of a reliable nature become available, we will consider using it for purposes of the final determination.

To calculate FMV, the reported factors of production were multiplied by the appropriate Bolivian or Thai values for the various components. The factors used to produce refined antimony trioxide include materials, labor, and energy.

We used the labor rates provided by the U.S. Embassy in Bolivia because these rates are specific to the antimony trioxide industry. We used a percentage for factory overhead based on Bolivian producer experience. We then added an amount for selling, general and administrative expenses, profit, and packing based on Bolivian producer experience to arrive at a constructed FMV of one metric ton of refined antimony trioxide.

There are two by-products created from the production of refined antimony trioxide. We have adjusted the per metric ton cost of manufacture for only one of these by-products. We have not adjusted for the other by-product because respondents did not provide the detailed information required to value such a by-product.

We made currency conversions in accordance with 19 CFR 353.60(c).

Verification

As provided in section 776(b) of the Act, we will verify all information used in reaching our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of refined antimony trioxide from the PRC, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The U.S. Customs Service shall require a cash deposit or posting of a bond equal to the estimated weighted-average amount by which the foreign market value of the subject merchandise exceeds the United States price as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Weighted-average margin percent
China Minmetals, CNIEC, and all other manufacturers, producers, and exporters	3.18

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determinations.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than November 27, 1991, and rebuttal briefs no later than December 5, 1991. In addition, a public version and five copies should be submitted by the appropriate date, if the submission is business proprietary. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. The hearing will be held at 10 a.m. on December 9, 1991, at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue NW., Washington DC 20230.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099 within ten days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; (3) the reasons for attending; and (4) a list of issues to be discussed. In accordance with section 19 CFR 353.38(b), oral presentation will be limited to arguments raised in briefs. Parties should confirm by telephone, the time, date, and place of the hearing 48 hours before the scheduled time with the officials listed under the "For Further Information Contact" section of this notice.

This determination is published pursuant to section 773(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15.

Dated: October 2, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-24331 Filed 10-8-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-549-501]

Certain Circular Welded Carbon Steel Pipes and Tubes From Thailand, Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On June 26, 1991, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on certain circular welded carbon steel pipes and tubes from Thailand for the period January 1, 1988 through December 31, 1988 (56 FR 29222). We have now completed that review and determine the total bounty or grant to be 2.86 percent *ad valorem* for all exporters of the subject merchandise to the United States. This rate differs from the preliminary results because of calculation adjustments.

EFFECTIVE DATE: October 9, 1991.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Michael Rollin, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On June 26, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 29222) the preliminary results of its administrative review of the countervailing duty order on certain circular welded carbon steel pipes and tubes from Thailand (50 FR 32751; August 14, 1985). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by this review are shipments of circular welded carbon steel pipes and tubes ("pipes and tubes") with an outside diameter of 0.375 inch or more but not over 16 inches, of any wall thickness. These products, commonly referred to in the industry as standard pipe or structural tubing, are produced to various ASTM specifications, most notably A-120, A-53 and A-135. During the review period, such merchandise was classifiable under item numbers 610.3231, 610.3234, 610.3241, 610.3242, 610.3243, 610.3252, 610.3254, 610.3256, 610.3258 and 610.4925 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item numbers 73.04.1010, 73.04.2050, 73.04.2070, 73.04.3100, 73.04.3900, 73.04.9050, 73.05.1010, 73.05.1110, 73.05.1210, 73.05.1910, 73.05.3140, 73.05.3910, 73.05.9010, 73.05.2060, 73.06.3010, 73.06.3050, 73.06.6050 and 73.06.9010 of the Harmonized Tariff Schedule (HTS). The TSUSA and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1988 through December 31, 1988 and the following programs: (1) Tax certificates for exports; (2) export packing credits; (3) electricity discounts for exporters; (4) tax and duty exemptions under section 28 of the Investment Promotion Act (IPA); (5) repurchase of industrial bills; (6) export processing zones; (7) International Trade Promotion Fund; (8) reduced business taxes for producers; and (9) additional incentives under the IPA.

Analysis of Comments Received

Six producers of Thai pipes and tubes exported the subject merchandise to the United States during the review period. Only one exporter, Saha Thai, responded to the Department's questionnaire. Therefore, we used best information available (BIA) for the nonresponding exporters in calculating the country-wide rate.

We received written comments from the petitioners, the Standard Pipe Subcommittee of the Committee on Pipe and Tube Imports and its individual producer numbers; the respondent, Saha Thai; and the Ad Hoc Coalition of Pipe Importers and its constituent members (domestic interested parties).

Comment 1: The petitioners argue that the Department should not use a sectoral input/output (I/O) study, which covers the entire secondary steel sector, in determining the amount of import duties and indirect taxes on inputs used in the production of pipes and tubes. According to the petitioners, the Department's use of the I/O study to establish the amount of indirect taxes and import duties imposed on inputs is incorrect as a matter of law. Both the GATT and U.S. law require the Department to determine any subsidy regarding tax rebates by comparing the taxes rebated on the "like product" to the actual indirect taxes imposed on inputs that are physically incorporated into that product. By following in the preliminary results of this review the reasoning adopted in Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Carbon Steel Butt-Weld Pipe Fittings from Thailand (55 FR 1695; January 18, 1990) (Butt-Weld Pipe Fittings), the petitioners argue that the Department deviated from the requirements of the law; i.e., the Department incorrectly examined the indirect tax incidence for the entire secondary steel sector I/O 106, rather than for the pipes and tubes that were actually subject to the review.

The respondent replies that the Department has verified both the validity of the I/O study and the methodology used by the Thai Ministry to calculate rebate rates in several countervailing duty determinations involving products from Thailand. See Preliminary Negative Countervailing Duty Determination; Steel Wire Rope from Thailand (56 FR 4262; February 4, 1991).

Department's Position: We disagree with the petitioners. In our last administrative review (56 FR 25407; June 4, 1991), we found that the I/O study is structured on a sectoral basis, and the same rebate rates apply to all products within each sector. Pipes and tubes are included in sector I/O 106, which consists of secondary steel products. This study provides the most detailed disaggregation available of the indirect tax incidence attributable to pipes and tubes, and we have reviewed and verified the validity of this I/O study in several cases. See, e.g., Butt Weld Pipe Fittings and the final Affirmative Countervailing Duty Determination; Steel Wire Rope from Thailand (56 FR 46299; September 11, 1991). Therefore, we used the indirect tax incidence on all items physically incorporated into secondary steel products in sector I/O 106 to calculate the amount of the allowable rebate of indirect taxes.

Comment 2: The petitioners argue that the Department has erred in calculating the amount of excessive indirect tax rebate because it failed to deduct from the calculation the tax incidence on inputs from sector I/O, 105, iron and steel products. The petitioners contend that, because no sector I/O 105 products were physically incorporated into the subject merchandise, the Department should exclude from the tax incidence

calculation any business and municipal taxes imposed on sector 105 products.

The respondent replies that the Department's determination of this issue is consistent with *Industrial Fasteners Group* v. *United States,* 710 F.2d 1576 (Fed. Cir. 1983), which clearly directs the Department to examine the original basis of the rebate calculations by the foreign government for a determination of the indirect tax incidence carried by the exported articles. The respondent further replies that the appropriate basis for a determination of the amount of the subsidy is an evaluation of the adequacy and correctness of the data contained in the I/O study itself. Because the Ministry of Finance calculation is based on that study, the department's calculation of the amount of the excessive indirect tax rebate is correct.

Department's Position: We disagree with the petitioners. As previously determined in our last administrative review (56 FR 25408; June 4, 1991), it is appropriate to base the calculation of allowable tax incidence on all inputs physically incorporated into sector I/O 106 products. The tax incidence for all products within that sector, including the subject merchandise, is determined on a sector-wide basis.

Comment 3: The petitioners argue that the taxes nonbasic industrial chemicals should not be included in the department's calculation of the indirect tax incidence on pipes and tubes because the chemicals are not physically incorporated in the subject merchandise.

The respondent replies that the Department rejected the petitioners' argument in the last administrative review and in Butt-Weld Pipe Fittings.

Department's Position: We disagree with the petitioners. We previously determined in the Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Malleable Cast Iron Pipe Fittings from Thailand (54 FR 6439; February 10, 1989 (Malleable Cast Iron Pipe) that aluminum chloride and zinc chloride are physically incorporated into malleable cast iron pipe fittings during the galvanizing process. Because pipes and tubes, like malleable cast iron pipe fittings, are classified in sector I/O 106 as secondary steel products, we determine that the tax incidence on basis industrial chemicals should be included in the allowable rebate because these chemical inputs are physically incorporated into products within the secondary steel sector.

Comment 4: The domestic interested parties contend that the use of best information available (BIA) as the basis for assessment of duties is intended to serve remedial, not punitive, purposes. See *e.g., National Association of Mirror Manufacturers* v. *United States,* 696 F. Supp. 642, 645 (CIT 1988). They argue that the imposition of a countervailing duty rate for duty assessment purposes that is significantly higher than the duty deposit rate, and higher than any rate found in the original investigation or subsequent reviews, produces an unnecessarily harsh result.

The parties content that in Certain Fresh Cut Flowers from Mexico (56 FR 29621; June 28, 1991), the Department applied a BIA rate to uncooperative respondents based on the highest duty rate previously assigned to them individually in either an administrative review or the original investigation, and that the department did not choose to impose a BIA rate based on the highest rate of any company previously examined. An approach in this proceeding similar to that taken in the Certain Fresh Cut Flowers from Mexico review would produce a duty rate of 1.79 percent, which, while higher than that found for any company based on a questionnaire response in either this review for the review for calendar year 1987, is fairer than the proposed rate.

The parties also contend that the BIA rates in the preliminary results for export packing credits, tax certificates for exports, and electricity discounts, programs found to have been previously used by Thai steel producers, exceeded the weighted-average levels found in the previous review and in the original investigation.

The parties specifically note that the BIA rate for the electricity discount benefit is significantly higher than the Department has found to prevail in previous reviews. Additionally, regarding the tax and duty exemptions under section 28 of the IPA, the BIA rate in the preliminary results of 1.89 percent has no justification whatsoever in the context of the countervailing duty order on the subject merchandise because the Department has never found that any pipe producer benefitted from section 28 of the IPA. In support of their argument, the interested parties cite to *Chevron Standard Ltd.* v. *United States,* 563 F. Supp. 1381, 1384 (CIT 1983) and *Olympic Adhesives Inc.* v. *United States,* 899 F.2d 1565 (Fed. Cir. 1990), in which both courts have generally dismissed the use of unrepresentative or extraordinarily high surrogate data as BIA for uncooperative firms.

Department's Position: In the preliminary results, as BIA, we used the highest company-specific rate from our last review for the electricity discount benefit. After further evaluation, we have now used, as BIA, the calculated benefit of 0.22 percent that was published in the last administrative review (56 FR 1175; January 11, 1991). This rate is the highest published rate for this program from any prior review of this order or the investigation. See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts thereof from Singapore; Final Results of Countervailing Duty Administrative Review (56 FR 26384; June 7, 1991) (*AFBs*). On this basis, we determine the weighted-average benefit from this program to be 0.14 percent *ad valorem.*

In our preliminary results we had two rates for the tax certificate program, a rate for Saha Thai corresponding to the "B" rate and an all other rate. We have now calculated a country-wide benefit for this program using, as BIA, the "A" rate of 0.81 percent for nonresponding exporters, which is the highest calculated overrebate rate, and the "B" rate of 0.51 percent for Saha Thai. On this basis, we determine the weighted-average benefit from this program to be 0.70 percent *ad valorem.* (For a discussion of the calculation of these rates, see the notice of preliminary results, 56 FR 29222.)

In calculating the benefit from the EPC loan program, we have now used, as BIA, the published rate found for that program in the investigation. Our selection of this BIA is in accordance with our administrative practice of selecting the highest benefit calculated during an administrative review of the order or the investigation. See, e.g., AFBs. On this basis, we determine the weighted-average benefit from this program to be 0.83 percent *ad valorem.*

The Department previously determined that section 28 of the IPA program provides benefits based upon export performance. See e.g., Malleable Iron Pipe Fittings from Thailand (54 FR 6439; February 10, 1989) and Butt-Weld Pipe Fittings. Because benefits under this program are contingent upon export performance, and cover capital equipment (i.e., machinery) which is not physically incorporated in the subject merchandise, we have determined that this program is countervailable.

The five exporters of the subject merchandise to the United States that did not respond to the Department's questionnaire were eligible to receive benefits under this program. Neither those exporters nor the Government of Thailand provided information in the response indicating that the companies did not apply for or receive benefits under section 28 of the IPA program during the review period. Because the questionnaire responses were

inadequate, the Department used, as BIA, the highest published non-BIA rate found for the IPA program in a final determination in an investigation or the final results of an administrative review for any product. See, e.g., Bricks from Mexico; Preliminary Results of Countervailing Duty Administrative Review (51 FR 25076; July 10, 1986); Bricks from Mexico; Final Results of Countervailing Duty Administrative Review (51 FR 43418; December 2, 1986), and *AFBs*, supra. Therefore, as BIA, we have determined that the exporters utilized the program and selected the highest published rate from Butt-Weld Pipe Fittings. On this basis, we determine the weighted-average benefit from this program to be 1.19 percent *ad valorem*.

In addition, we note that in the preliminary results we calculated a company-specific rate for Saha Thai and an all other rate based on BIA for the nonresponding companies because we had found that Saha Thai received a "significantly different" net subsidy during the period. See 19 CFR 353.20(d)(2); see also, Preamble to Final Rule, 53 FR 52306 at 52325, December 27, 1988. Saha Thai's individual calculated rate for each program remains unchanged from the preliminary results. We have now calculated, however, a country-wide total bounty or grant that includes Saha Thai's value of exports of the subject merchandise to the United States during the review period because Saha Thai's calculated net subsidy is no longer significantly different from the remaining five nonrespondents.

Final Results of Review

As a result of our review, we determine the total bounty or grant to be 2.86 percent *ad valorem* for all exporters of the subject merchandise during the period January 1, 1988 through December 31, 1988.

The Department will instruct the Customs Service to assess countervailing duties of 2.86 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1988 and on or before December 31, 1988.

The Department will also instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 2.86 percent of the f.o.b. invoice price on all shipments of this merchandise from Thailand entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: October 3, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-24345 Filed 10-8-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-508-605]

Industrial Phosphoric Acid From Israel—Final Results of Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative reviews.

SUMMARY: On June 7, 1991, the Department of Commerce published the preliminary results of its administrative reviews of the countervailing duty order on industrial phosphoric acid from Israel (56 FR 26389). We have now completed those reviews and determine the net subsidy to be 19.46 percent *ad valorem* for Haifa Chemicals, Ltd. and 9.18 percent *ad valorem* for all other firms during the period January 1, 1988 through December 31, 1988. We determine the net subsidy to be 11.26 percent *ad valorem* for all firms during the period January 1, 1989 through December 31, 1989.

EFFECTIVE DATE: October 9, 1991.

FOR FURTHER INFORMATION CONTACT: Cameron Cardozo or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On June 7, 1991, the Department of Commerce (the Department) published in the Federal Register (56 FR 26389) the preliminary results of its administrative reviews of the countervailing duty order on industrial phosphoric acid from Israel (52 FR 31057; August 19, 1987) covering the periods January 1, 1988 through December 31, 1988 and January 1, 1989 through December 31, 1989. The Department has now completed those administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by these reviews are shipments of Israeli industrial phosphoric acid. During the 1988 review period, this merchandise was classifiable under item number 416.30 of the Tariff Schedules of the United States (TSUS). During the 1989 review period, this merchandise was classifiable under item number 2809.20.00 of the Harmonized Tariff Schedule (HTS). The TSUS and HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The reviews cover the periods January 1, 1988 through December 31, 1988, and January 1, 1989 through December 31, 1989, and ten programs. Negev Phosphates, Ltd. and Haifa Chemicals, Ltd. are the only known producers exporting the subject merchandise from Israel to the United States during the 1988 review period. Negev Phosphates, Ltd. is the only known producer exporting the subject merchandise from Israel to the United States during the 1989 review period.

Calculation Methodology for Assessment and Cash Deposit Purposes

Haifa Chemicals, Ltd. did not respond to the 1988 questionnaire. As best information available, we used the rate from the original investigation which is the highest rate ever found for the merchandise covered by the order (52 FR 31057; August 19, 1987). In calculating the benefits received during the 1988 review period, we followed the methodology described in the preamble to 19 CFR 355.20(d) (53 FR 52325; December 27, 1988). First, we calculated a country-wide rate, weight-averaging the benefits received by the two companies subject to review to determine the overall subsidy from all countervailable programs benefitting exports of the subject merchandise to the United States. Because the country-wide rate was above *de minimis* as defined by 19 CFR 355.7, we proceeded to the next step in our analysis and examined the aggregate *ad valorem* rate for each company including all countervailable programs combined, to determine whether individual company rates differed significantly from the weighted-average country-wide rate. One company, Haifa Chemicals, Ltd., received aggregate benefits which were significantly different within the meaning of 19 CFR 355.22(d)(3)(ii). Therefore, this company must be treated separately for assessment and cash deposit purposes.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received written

comments from the petitioners, the Monsanto Company and FMC Corporation, and from a respondent, Negev Phosphates, Ltd.

Comment 1: The respondent asserts that the Department's methodology for calculating the net subsidy to Negev Phosphates, Ltd. (NPL) from the Exchange Rate Risk Insurance Scheme (EIS) overstates the benefit provided by the EIS. NPL maintains that the Department erroneously based its calculations on cash receipts, rather than on an accrual basis. As was demonstrated at verification, NPL's records regarding EIS payouts are on an accrual basis. Thus, according to respondent, the company does not benefit from the EIS when it receives a payment, but instead when the shipment is made and the payment accrues. At verification, the Department was informed that because EIS payouts during 1989 related to sales in the previous period, the Department's methodology distorted the actual benefit to NPL.

Petitioners point out that it would be inconsistent with announced Department policy and traditional practice to calculate EIS benefits on an accrual rather than on a cash receipt basis. According to petitioners, there is nothing in the circumstances of the present administrative reviews that would warrant a departure from the long-standing Department practice of following a cash-flow-effect approach to the calculation of countervailable benefits, such as those received by NPL under the EIS. Petitioners also point out that NPL did not propose the accrual approach during the 1987 administrative review, when it was presumably advantaged by the Department's cash flow approach because of higher sales during that period.

Department's Position: We disagree with the respondent. It is the Department's long-standing practice to use the cash-flow method in determining when benefits are received (see, Final Affirmative Countervailing Duty Determination: Fresh, Chilled, and Frozen Pork From Canada (54 FR 30786; July 24, 1989)). Under this practice, the cash flow and economic effect of a benefit normally occurs when a firm experiences a difference in cash flows, either in the payments it receives or the outlays it makes, as a result of its receipt of the benefit (see, Countervailing Duties: Notice of Proposed Rulemaking and Request for Public Comments (54 FR 23384; May 31, 1989)). Applicable exceptions are "big ticket items" whose production and delivery may extend over several years, and export benefits provided as a percentage of the value of the exported merchandise on the date of export. Respondent has failed to justify an exception to this general rule. IPA is not a big ticket item, the production and delivery of which may extend over several years; and, although NPL's records are kept on an accrual basis, the actual premium and payout amounts are determined not at the time of the sale, but only after the Israel Foreign Trade Risks Insurance Corp., Ltd. receives documentation of the actual shipment of the merchandise and receipt of payment (see, Verification Report, page 2). We therefore do not see any reason to calculate the EIS benefit on an accrual basis and continue to apply our cash flow methodology.

Comment 2: NPL argues that the Department's methodology for calculating the subsidy from grants to the Arad rock processing plant overstates the benefit actually conferred on industrial phosphoric acid (IPA). The problem arises primarily because, in multiplying the amount of benefit on one IPA ton by the total quantity of all IPA sales to all markets, the Department's methodology fails to take into account that some of the IPA sold is produced from leftover rock phosphate from the closed mine at Machtesh. NPL proposes to correct this distortion by determining the ratio of rock phosphate from the Arad mine actually used in IPA production during a particular year over rock phosphate extracted from the Arad mine in that same year.

Department's Position: We disagree with the respondent. Before the publication of the preliminary results, we requested that NPL supply us with figures for both review periods for the total tonnage of rock phosphate sold by the Arad processing plant, both for IPA and other uses. In a letter dated May 23, 1991, NPL submitted information in response to the Department's request. NPL's submission did not indicate that the figures for total tons of rock sold included rock from anywhere else but the Arad mine. Furthermore, respondent fails to show why rock from a different mine and processed at the Arad plant would not be countervailable, since the Arad processing plant, not the mines, benefitted from the subsidies. Therefore, based on the information available to the Department, we do not consider that we should change our methodology for determining the subsidy to the Arad plant. In fact, the methodology proposed by the respondent relies on the amount of phosphate rock processed and not on actual sales of IPA to determine the amount of the subsidy during the review period. We consider our methodology, based on actual sales, to be a more accurate measure of the benefits received on the subject merchandise during the review periods.

Final Results of Review

After reviewing all of the comments received, we determine the net subsidy to be 19.46 percent *ad valorem* for Haifa Chemicals, Ltd., and 9.18 percent *ad valorem* for all other companies during the period January 1, 1988 through December 31, 1988. We determine the net subsidy to be 11.26 percent *ad valorem* for all companies during the period January 1, 1989 through December 31, 1989.

Therefore, the Department will instruct the Customs Service to assess countervailing duties of 19.46 percent of the f.o.b. invoice price on shipments from Haifa Chemicals, Ltd., and 9.18 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1988 and on or before December 31, 1988, and 11.26 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1989 and on or before December 31, 1989.

Further, the Department will instruct the Customs Service to collect a cash deposit of 11.26 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This cash deposit shall remain in effect until publication of the final results of the next administrative review.

These administrative reviews and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: September 26, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-24333 Filed 10-8-91; 8:45 am]

BILLING CODE 3510-DS-M

[C-357-403]

Oil Country Tubular Goods From Argentina—Preliminary Results of Countervailing Duty; Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on oil country tubular goods from Argentina. We preliminarily determine the total bounty or grant to be 0.36 percent *ad valorem* for the period January 1, 1989 through December 31, 1989. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: October 9, 1991.

FOR FURTHER INFORMATION CONTACT: Laurie Goldman or Barbara Tillman, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On November 13, 1990, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (55 FR 47370) of the countervailing duty order on oil country tubular goods from Argentina (49 FR 46564; November 27, 1984) for the period January 1, 1989 through December 31, 1989. On November 20, 1990, Lone Star Steel Company requested an administrative review covering the period January 1, 1989 through December 31, 1989. We initiated the review on December 17, 1990 (55 FR 51742). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by the review are shipments of Argentine oil country tubular goods (OCTG). These products include finished or unfinished oil country tubular goods, which are hollow steel products of circular cross section intended for use in the drilling of oil or gas, and oil well casing, tubing and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or proprietary specifications. During the review period this merchandise was classifiable under items 7304.20.20, 7304.20.40, 7304.20.50, 7304.20.60, 7304.20.70, 7304.20.80, 7304.39.00, 7304.51.50, 7304.59.60, 7304.59.80, 7304.90.70, 7305.20.40, 7305.20.60, 7305.20.80, 7305.31.40, 7305.31.60, 7305.39.10, 7305.39.50, 7305.90.10, 7305.90.50, 7306.20.20, 7306.20.30, 7306.20.40, 7306.20.60, 7306.20.80, 7306.30.50, 7306.50.50, 7306.60.70 and 7306.90.10 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope of the order.

The review covers the period January 1, 1989 through December 31, 1989 and eleven programs. The sole producer exporting OCTG to the United States during the review period was Siderca, S.A.

Analysis of Programs

(A) Rebate Upon Export of Indirect Taxes Paid (Reembolso)

The Reembolso is a tax rebate paid upon export and is calculated as a percentage of the f.o.b. invoice price of the exported merchandise. In the previous administrative review (Oil Country Tubular Goods from Argentina; Final Results of Countervailing Duty Administrative Review (56 FR 38116, August 12, 1991)) (OCTG 1987–1988), we determined that: (1) The Reembolso is intended to operate as a rebate of both indirect taxes and import duties; (2) the government conducted a study of indirect tax incidence on inputs that are physically incorporated into the exported product; and (3) the rebate schedules are periodically revised to reflect the amount of actual duties and indirect taxes paid.

As explained in OCTG 1987–1988, on October 16, 1986, Decree 1555/86 modified the Reembolso program "to make the tax regime permanent and independent from other macroeconomic variables, responding exclusively to the concept of the refund of indirect taxes." The new decree set more precise and transparent guidelines to implement the refund of indirect taxes within the context of the new law. Rather than providing different rebate rates for each product or industry sector, the Reembolso program now has only three broad rebate levels. The rates are 10 percent for level I, 12.5 percent for level II, and 15 percent for level III. Based on the government's 1986 calculation of the tax incidence in the seamless steel tube industry, OCTG is classified in level II and received a 12.5 percent rebate during the review period. However, the effective rate of Reembolso can be less than 12.5 percent because commissions paid on export sales are deducted from the f.o.b. value before the amount of the rebate is calculated.

The Department has determined that the Reembolso does not confer a bounty or grant if the tax rebate does not exceed the total amount of allowable indirect taxes and import duties borne by inputs that are physically incorporated in the exported product, and indirect taxes levied at the final stage.

In this review, we have taken into account all changes made to the 1986 tax incidence study that determined the level of rebate allowable to producers of OCTG. We found that indirect taxes on physically incorporated inputs and final stage indirect taxes on OCTG amounted to 24.22 percent during the review period. Because Siderca's effective rate of Reembolso did not exceed the 24.22 percent of allowable tax incidence, we preliminarily determine that there was no overrebate of indirect taxes for the review period and, therefore, no benefit from this program during the review period.

(B) Pre-financing of Exports under Circular RF–153

In 1989, OPRAC–1, under Circular RF–153, authorized pre-export short-term loans to exporters of the subject merchandise for up to 70 percent of the f.o.b. value of the exported merchandise. The loans are denominated in U.S. dollars but are disbursed in australes. The funds are provided by the Central Bank of Argentina and disbursed by private commercial banks. The interest on pre-export loans is payable at the end of each calendar quarter or when principal payments are made. Because only exporters are eligible to receive these loans, we preliminarily determine that these loans are countervailable to the extent that they are provided to exporters at preferential rates.

To calculate the benefit, we compared the amount of interest paid on each loan during the review period with the amount that would have been paid on comparable short-term commercial loans available in Argentina during the review period. For 1989, we used as our benchmark the average of the 1989 quarterly interest rates offered by commercial banks in Argentina. Since the company could tie the loans to specific export shipments, we allocated the benefit over the company's total exports of the subject merchandise to the United States. On this basis, we preliminarily determine the benefit from this program to be 0.32 percent *ad valorem* during the period January 1, 1989 through December 31, 1989.

(C) Government Counterguarantees

Petitioners have alleged that a guarantee provided by the Banco Nacional de Desarollo (BANADE) and a counterguarantee provided by the Ministry of Finance on a 1986 loan by the Inter-American Development Bank (IADB) to Siderca are countervailable. While the Department does not consider

loans provided by international lending institutions to be countervailable under U.S. countervailing duty law (see, *e.g.*, Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Certain Fresh Cut Flowers from Ecuador (52 FR 1365, January 13, 1987) and Initiation of Countervailing Duty Investigation; Certain Textiles and Textile Products from the Philippines (49 FR 34381, August 30, 1984)), we do consider that government action taken in connection with such loans is within the purview of U.S. countervailing duty law. The government's guarantee of a loan from an international lending institution is an example of a government action that could be actionable under U.S. countervailing duty law. Our determination with respect to such government actions must be based on whether they are limited to a specific enterprise or industry, or group of enterprises or industries, in accordance with section 771(5)(A)(ii) of the Tariff Act of 1930, as amended (the Act), and whether they are on terms inconsistent with commercial considerations.

In the original investigation (Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Oil Country Tubular Goods from Argentina (49 FR 46564, November 27, 1984)), we determined that the BANADE program was not countervailable based on section 771(5)(A)(ii) of the Act. In the most recently completed administrative reviews covering calendar years 1987 and 1988, petitioners again alleged that the BANADE guarantee and the Ministry of Finance counterguarantee were countervailable. In the final results of those reviews (Oil Country Tubular Goods from Argentina; Final Results of Countervailing Duty Administrative Reviews (56 FR 38116, August 12, 1991)), we stated that petitioners had not provided sufficient information for the Department to reconsider its previous determination with respect to guarantees.

During the course of the present review, petitioners have again alleged, on the basis of additional information, that guarantees and counterguarantees have been provided on a specific basis in Argentina after the time period that was examined in the Department's final determination in the OCTG investigation. Petitioners' allegation and supporting information provided in this review in a timely manner, and were deemed sufficient to warrant a reexamination of the guarantee program.

On July 26, 1991, we sent a questionaire to the Government of Argentina requesting information on the guarantee program. We asked questions concerning the eligibility requirements and use of the guarantee program. Based on the information provided in that response, we requested additional information on August 26, 1991, concerning the distribution of counterguarantees in each year between 1981 and 1986.

With respect to the BANADE guarantee provided on Siderca's IADB loan, we preliminarily determine that it is not countervailable. Balancing the information contained in petitioner's allegation against the information provided by the Government of Argentina in its questionnaire responses, we cannot conclude that there is a basis for overturning our previous determination that BANADE guarantees are not countervailable.

With respect to counterguarantees provided by the Ministry of Finance, the Government of Argentina provided no specific information in the questionnaire responses regarding the use or distribution of Ministry of Finance counterguarantees, citing the limited amount of time available to respond to the Department's questionnaire. The Government of Argentina, however, asserted that publicly available information showed that counterguarantees were not restricted to a specific enterprise, sector, or region. As examples of such evidence, the government cited to information indicating that, in 1986, the year of the IADB loan, the aggregate value of BANADE loans counterguaranteed by the Ministry of Finance significantly exceeded the aggregate value of BANADE loans without such counterguarantees, and that BANADE loans are widely distributed throughout Argentina. Based on this information, the Government of Argentina argued that the "only reasonable conclusion" is that counterguarantees are not specific. In addition, Siderca provided a letter from the Government of Argentina listing various industries that received counterguarantees from 1982 to 1988. However, Siderca's submission did not provide a quantifiable breakdown of the number of counterguarantees each industry received in each year.

The Department has carefully evaluated the information and arguments submitted by the Government of Argentina and Siderca, but has concluded that there is insufficient information to determine that Ministry of Finance counterguarantees are not limited to a specific enterprise or industry, or group of enterprises or industries. In the absence of specific information on the use and distribution of the counterguarantees which would allow us to make a full and informed judgment as to their specificity, we preliminarily determine that the counterguarantee is limited to a specific enterprise or industry, or group of enterprises or industries. Because the counterguarantee is also provided at no charge to Siderca, we also determine that it is inconsistant with commercial considerations.

Insofar as the effect of the counterguarantee provided by the Ministry of Finance was to reduce the fee for the BANADE guarantee, we calculated the benefit as the simple difference between the amount Siderca would have paid for the guarantee and the amount Siderca actually paid for the BANADE guarantee as a result of the counterguarantee provided by the Ministry of Finance. Because the counterguarantee provided a benefit for both domestic and export sales, we divided the benefit by Siderca's total sales of all products. Based on these calculations, we preliminarily determine the benefit to Siderca from the Government of Argentina's counterguarantee to be 0.04 percent *ad valorem*.

Other Programs

We examined the following programs and preliminarily determine that OCTG exporters did not use them during the review period:

- Post-export financing under OPRAC 1–9.
- Tax deductions under Decree 173.
- Stamp tax exemption under Decree 186.
- RF–21 loans and short-term loans under Communique 1205.
- Income tax and capital tax exemptions.
- Capital grants.
- Government trade promotion programs.
- Incentives for exports leaving from Southern Ports.

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 0.36 percent *ad valorem* for the period January 1, 1989 through December 31, 1989. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*. The Department intends to instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1989 and on or before December 31, 1989.

Further, the Department intends to instruct the Customs Service to waive

cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs under section 355.38(e) are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: October 3, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

[FR Doc. 91-24332 Filed 10-8-91; 8:45 am]

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[C-201-405]

Certain Textile Mill Products From Mexico; Final Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative review.

SUMMARY: On August 2, 1991, the Department of Commerce published the preliminary results of its administrative review of the countervailing duty order on certain textile mill products from Mexico (56 FR 37081). We have now completed that review and determine the total bounty or grant to be *de minimis* or zero for 31 companies, 55.73 percent *ad valorem* for Atoyac Textil, S.A. de C.V., and 2.26 percent *ad valorem* for all other companies for the period January 1, 1989 through December 31, 1989.

EFFECTIVE DATE: October 9, 1991.

FOR FURTHER INFORMATION CONTACT: Dana S. Mermelstein or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 37081) the preliminary results of its administrative review of the countervailing duty order on certain textile mill products from Mexico (50 FR 10824; March 18, 1985). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments of certain textile mill products from Mexico. During the review period, such merchandise was classifiable under the item numbers of the Harmonized Tariff Schedule (HTS) listed in the Appendix.

The review covers the period from January 1, 1989 through December 31, 1989, 38 companies, and the following programs: (1) FOMEX; (2) FOGAIN; (3) FONEI; (4) Program for Temporary Importation of Products Used in the Production of Exports (PITEX); (5) CEPROFI; (6) Article 15 loans; (7) BANCOMEXT loans; (8) State Tax Incentives; and (9) Import Duty Reductions and Exemptions.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments from Atoyac Textil, S.A. de C.V., (Atoyac) and Tapetes Luxor, S.A., (Tapetes) two respondent companies. The comments were timely within the meaning of 19 CFR 355.38 (c)(1)(ii).

Comment 1: Atoyac incorporates by reference an argument raised in two previous reviews that certain textile mill products from Mexico should be subject to an injury determination by the International Trade Commission.

Department's Position: We disagree. We maintain our position that certain textile mill products from Mexico are not entitled to an injury determination. See Certain Textile Mill Products from Mexico; Final Results of Countervailing Duty Administrative Review (56 FR 12175, 12176; March 22, 1991); (54 FR 36841, 36842; September 5, 1989).

Comment 2: Atoyac also incorporates by reference an argument made in a previous administrative review that the Department should revoke the countervailing duty order on certain textile mill products under the "sunset provision" because the petitioners have not requested an administrative review since the countervailing duty order was published on March 18, 1985.

Department's Position: We disagree. As we stated in the final results of the 1987 administrative review, "administrative reviews have been requested by the Government of Mexico and conducted by the Department annually since the order was issued, thus eliminating the Department's authority under § 355.25(d)(4) to revoke." Certain Textile Mill Products from Mexico; Final Results of Countervailing Duty Administrative Review (56 FR 12175, 12177; March 22, 1991).

Comment 3: Atoyac argues that the Program for Temporary Importation of Products Used in the Production of Exports (PITEX) is not countervailable because of its similarity to the United States Temporary Importation Under Bond (TIB) program. The TIB program allows articles to enter the United States temporarily, free of duty, provided certain conditions are met. Respondent cites the following conditions for participation in the TIB program: (1) a bond must be posted and (2) the goods must be described in the statute or law. In fact, under the Tariff Schedules of the United States Annotated (TSUSA), subheading 9813.00.55 specifies "Articles of a special design for temporary use in connection with the manufacture or production of articles for export." Therefore, like the PITEX program, the TIB program clearly allows for the temporary duty-free importation of machinery used to manufacture exports. Respondent further argues that because the Department has determined that PITEX confers countervailable benefits on its users, the TIB program obviously does so as well. In light of the similarity between the U.S. and the Mexican programs, the Department should reconsider its decision regarding the countervailability of the PITEX program.

Department's Position: We disagree. A comparison of the PITEX program and the United States TIB program is irrelevant for the purposes of determining whether the PITEX program is contrary to U.S. countervailing duty law. Under current U.S. law, import duty exemptions or rebates of import duties that are provided only to exporters, for merchandise that is not physically incorporated into exported products constitute countervailable benefits. Thus, to the extent that PITEX is only available to exporters, and allows for the exemption of duties on non-physically incorporated equipment or machinery, this program is countervailable under U.S. law. See Certain Textile Mill Products from Mexico; Final Results of Countervailing Duty Administrative Review (56 FR 12175, 12178; March 22, 1991).

Comment 4: Atoyac and Tapetes argue that the Department should treat deferrals of duty on imported capital goods under PITEX as interest-free loans rather than as grants, because there is a possibility that the companies will convert the equipment to permanent import and pay a portion of the duties. Tapetes cites several administrative determinations in which the Department treated the deferral of duties or taxes as interest-free loans, in lieu of grants. See Cotton Sheeting and Sateen from Peru; Final Results of Administrative Review (49 FR 34542; 1984) (duty deferral); Cotton Yarn from Peru; Final Results of Countervailing Duty Administrative Review (51 FR 44324; 1986); Final Negative Countervailing Duty Determination; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from the Republic of Korea (54 FR 15513, 15515–6, 15518; 1989) (tax deferral); Final Affirmative Countervailing Duty Determination; Certain Stainless Steel Cookingware from Taiwan (51 FR 42891, 42893; 1986) (tax deferral); Final Affirmative Countervailing Duty Determination; Certain Stainless Steel Cookingware from the Republic of Korea, (51 FR 42867, 42869; 1986) (tax deferral).

Department's Position: We disagree. We believe it is more appropriate to treat the Mexican Government's forgiveness of import duties under PITEX as grants, rather than as interest-free loans. PITEX provides qualified exporters with import duty exemptions at the time the machinery is imported for the production of merchandise destined for export, rather than as a deferral contingent on certain export requirements. Under PITEX, the exporters anticipate re-export of the merchandise. See Verification Report, dated 5/31/91, at page 6 (1988 administrative review). As long as the machinery is reexported after five years, PITEX does not require the exporter to reimburse the Mexican Government for any import duties exempted at the time of import.

If the exporter chooses to convert the machinery to permanent import, it appears that any reimbursement made to the Mexican Government of import duties previously exempted would not be significant because: (1) Duties are calculated based on the depreciated value of the machinery at the time of conversion; (2) exporters can renew the five-year temporary period and retain the machinery up to ten years prior to converting it to permanent import; and, (3) duties are calculated at the duty rate in effect at the time of conversion, not at the time of import. In addition, we note that duty rates in Mexico have been decreasing steadily over the last five years, further reducing any duty liabilities under PITEX. Under these circumstances, there is a strong likelihood that the duties due at the time of conversion would be zero. For these reasons, duty exemptions, under PITEX are properly treated as grants and we expensed them in full at the time of import, when the exporters otherwise would have paid duties on the imported machinery. See Final Negative Countervailing Duty Determination; Silicon Metal from Brazil (56 FR 26988; June 12, 1991), see also Notice of Proposed Rulemaking and Request for Public Comments, § 355.48(b)(6) (54 FR 23366, 23384; May 31, 1989).

In the cases cited by respondent, the facts warranted the Department's treatment of the duty and tax deferrals as interest-free loans. These programs operated to defer the payment of taxes or duties, the ultimate exemption of which was contingent on meeting export targets. Accordingly, Commerce treated the deferrals as interest-free loans until such targets were met.

Finally, unlike other cases in which an interest-free loan approach was used, it would be extremely difficult for the Department to track the disposition of each individual piece of machinery imported under PITEX and any duties subsequently paid at conversion to permanent import. In the cases respondent cites, the Department could easily verify whether export targets were met or to what extent export tax reserve accounts were taxed in the subsequent period.

Comment 5: Tapetes argues that the Department's treatment of PITEX benefits as a grant creates an incentive for Mexican companies to continue to use PITEX in a future review period in an effort to capture the adjustment the Department will grant for payment of duties on machinery converted to permanent import during that period. Applying the interest-free loan methodology will remove this incentive.

Department's Position: We disagree. Many factors affect an exporter's decision to continue to import machinery under PITEX. It is misguided to assume that the potential for an adjustment of PITEX benefits would be the sole motivation for the exporter's decision. Moreover, respondent's comment is speculative because, to date, no exporters have paid duties on conversion of machinery from temporary to permanent import.

Comment 6: Atoyac argues that its PITEX benefit should be treated as a domestic subsidy for the following reasons: first, because Atoyac exported a very small percentage of its total sales, its PITEX benefit clearly did not stimulate export sales nor was it contingent on export performance; second, the Department's policy or belief is that an export subsidy will be tied to actual export performance or earnings; and, third, the Department's policy is that an export subsidy will only be available to manufacturers who achieve specified export performance goals. The facts regarding Atoyac's export performance do not support the Department's conclusion that Atoyac received an export subsidy. Further, the Department's application of export subsidy methodology to Atoyac's unique situation results in an unfair and inequitable application of United States countervailing duty law.

Department's Position: We disagree. The eligibility criteria for the PITEX program require a company to have a proven export record, and to use the imported merchandise (both raw materials and equipment) in the production of goods for export. Thus, PITEX is clearly an export subsidy. See Certain Textile Mill Products from Mexico; Final Results of Countervailing Duty Administrative Review (56 FR 12175, 12178; March 22, 1991). See also Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments (54 FR 23366, 23368, 23379; May 31, 1989). Therefore, the actual level of exports achieved by Atoyac is irrelevant for the purposes of determining whether PITEX is an export subsidy.

Comment 7: Tapetes and Atoyac both argue that because machinery imported under PITEX is used to produce goods both for export and for the domestic

market, the proper denominator for PITEX benefits is total sales. Tapetes also argues that the Department's allocation of PITEX benefits to exports is inappropriate and will result in increased exports of the subject merchandise to the United States.

Department's Position: We disagree. As stated in our response to Comment 6, PITEX is clearly an export subsidy because eligibility for PITEX benefits is limited to exporters. Because PITEX is an export subsidy, we divide the benefit by the firm's total exports, not total sales.

Moreover, a company using PITEX must apply for special authorization to sell up to thirty percent of its production in the domestic market, and can only do so provided it pays the corresponding duties. Therefore, no PITEX benefits are granted on products which are sold in the domestic market. This requirement also supports the Department's position that PITEX is an export subsidy.

We disagree with Tapetes that our methodology will result in increased exports of subject merchandise to the United States. We note that the denominator used in calculating PITEX benefits is total exports, not just exports of subject merchandise to the United States. Thus, the importer could shift it sales to another country in order to lessen its PITEX benefit.

Comment 8: Atoyac argues that since it did not qualify for use of the PITEX program, the Department should disregard its PITEX benefit. To qualify for PITEX, a manufacturer must be a proven exporter and must export ten percent of total sales or $500,000 per year. To be eligible for temporary machinery imports, a company must export thirty percent of its total sales. Because Atoyac did not meet these requirements, it should not have been eligible for PITEX, and therefore the Department should not penalize Atoyac for the misapplication by SECOFI (the Mexican Department of Foreign Trade) of the PITEX rules and regulations, and should disregard this aberrant benefit.

Department's Position: We disagree. Atoyac reported receiving a PITEX benefit, which the Department considers a countervailable export subsidy. Whether or not the Government of Mexico properly authorized the exemption of duties under the PiTEX program is not relevant to the fact that Atoyac actually received the benefit of the exemption.

Comment 9: Atoyac argues that the Department should allocate the PITEX benefit over time, rather than expensing the full amount of the duty exemptions in the year of receipt, and suggests three alternate methodologies: (1) Allocate the PITEX benefit over the five-year duty deferral period; (2) allocate the PITEX benefit over a ten-year depreciation period permitted under Mexican tax law; or, (3) allocate the PITEX benefit over the normal life expectancy of the machine or the productive output capacity of the machine.

Department's Position: We disagree. It is the Department's standard practice to expense benefits resulting from tax or duty exemption programs in full in the year of receipt. See Final Affirmative Countervailing Duty Determination and Partial Countervailing Duty Order: Ball Bearings and Parts Thereof from Thailand; Final Negative Countervailing Duty Determinations: Antifriction Bearings (Other Than Ball or Tapered Roller Bearings) and Parts Thereof from Thailand (54 FR 19130; May 3, 1989); see also Certain Cotton Yarn Products from Brazil; Preliminary Results of Countervailing Duty Administrative Review (55 FR 19766; May 11, 1990); see also the preamble to sections 355.48(a) and (b), and 355.49(a)(1) and (2) of the proposed regulations in Notice of Proposed Rulemaking and Request for Public Comments, (54 FR 23366, 23375; May 31, 1989). Moreover, Atoyac did not provide any information with respect to PITEX which would require different treatment here.

Firms Not Receiving Benefits

We determine that the following firms receive zero or *de minimis* benefits during the period January 1, 1989 through December 31, 1989:

(1) Abetex, S.A. de C.V.
(2) Apolo Textil, S.A. de C.V.
(3) Bemis Craftil, S.A. de C.V.
(4) Celanese Mexicana, S.A. de C.V.
(5) Comercializadora de Textiles, S.A. de C.V.
(6) Crisol Textil, S.A. de C.V.
(7) Derivados Acrilicos, S.A. de C.V.
(8) Encajes Mexicanos, S.A. de C.V.
(9) Estambres Millor, S.A. de C.V.
(10) Exportaciones Diaz, S.A. de C.V.
(11) Fabrica de Hilados y Tejidos SINDEC, S.A.
(12) Fabrica la Estrella, S.A. de C.V.
(13) Fibras Sinteticas, S.A. de C.V.
(14) Fieltros Finos, S.A. de C.V.
(15) Glasmex, S.A. de C.V.
(16) Grupo HYTT, S.A. de C.V.
(17) Hilaturas de la Laguna, S.A. de C.V.
(18) Hilaturas Lerma, S.A. de C.V.
(19) Hilos Timon, S.A. de C.V. (formerly Hilaturas Maya, S.A. de C.V.)
(20) Jeramex, S.A. de C.V.
(21) Milyon, S.A. de C.V.
(22) Nanco, S.A. de C.V.
(23) Nueva Nacional Textil Manufacturera del Salto, S.A. de C.V.
(24) Portafelt de Mexico, S.A. de C.V.
(25) Productora Textil San Marcos, S.A. de C.V.
(26) Ryltex, S.A. de C.V.
(27) Santiago Textil, S.A. de C.V.
(28) Tamacani, S.A. de C.V.
(29) Telas VYC, S.A. de C.V.
(30) Terpel, S.A. de C.V.
(31) Textiles del Hogar San Marcos, S.A. de C.V.

Final Results of Review

After reviewing all of the comments received, and correcting for clerical errors found in the calculations, we determine the total bounty or grant to be zero or *de minimis* for 31 companies, 55.73 for Atoyac Textil, S.A. de C.V., and 2.26 percent *ad valorem* for all other companies for the period January 1, 1989 through December 31, 1989.

For all merchandise listed in the Appendix, the Department will instruct the Customs Service to liquidate, without regard to countervailing duties, shipments from the 31 firms listed above, and to assess countervailing duties of 55.73 percent of the f.o.b. invoice price on shipments from Atoyac Textil, S.A. de C.V., and 2.26 percent of the f.o.b. invoice price on shipments from all other firms exported on or after January 1, 1989 and on or before December 31, 1989.

The Department will also instruct the Customs Service to waive cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, on any shipments of merchandise from the 31 firms listed above, and to collect a cash deposit of estimated countervailing duties of 55.73 percent of the f.o.b. invoice price on shipments from Atoyac Textil, S.A. de C.V., and 2.26 percent of the f.o.b. invoice price on shipments from all other firms entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice. This deposit requirement and waiver shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: October 3, 1991.

Marjorie A. Chorlins,

Acting Assistant Secretary for Import Administration.

Appendix—Certain Textile Mill Products From Mexico; C–201–405

Harmonized Tariff System (HTS) Numbers 1989 Administrative Review

3918.10.32, 3921.12.19, 3921.13.19, 3921.90.19, 3921.90.21, 4008.21.00, 4010.10.10, 5106.10.00, 5106.20.00, 5107.10.00, 5107.20.00, 5108.10.60, 5108.20.60, 5109.10.60, 5109.90.60, 5111.11.60, 5111.19.20, 5111.19.60, 5111.20.60, 5111.30.60, 5112.19.60, 5112.20.00, 5112.30.00, 5204.11.00,

5204.19.00, 5204.20.00, 5205.11.10, 5205.12.10, 5205.12.20, 5205.13.10, 5205.13.20, 5205.14.10, 5205.22.00, 5205.23.00, 5205.24.00, 5205.25.00, 5205.31.00, 5205.32.00, 5205.33.00, 5205.34.00, 5205.42.00, 5205.43.00, 5205.44.00, 5206.11.00, 5206.12.00, 5206.13.00, 5206.14.00, 5206.15.00, 5206.31.00, 5206.32.00, 5206.33.00, 5206.34.00, 5206.35.00, 5206.41.00, 5206.42.00, 5206.43.00, 5206.44.00, 5206.45.00, 5207.10.00, 5207.90.00, 5208.11.20, 5208.12.40, 5208.13.00, 5208.19.40, 5208.21.20, 5208.21.40, 5208.22.40, 5208.22.60, 5208.23.00, 5208.29.40, 5208.29.60, 5208.31.40, 5208.31.60, 5208.31.80, 5208.32.30, 5208.32.40, 5208.32.50, 5208.33.00, 5208.39.20, 5208.39.60, 5208.39.80, 5208.41.40, 5208.41.60, 5208.41.80, 5208.42.30, 5208.42.40, 5208.42.50, 5208.43.00, 5208.49.40, 5208.51.40, 5208.51.60, 5208.51.80, 5208.52.30, 5208.52.40, 5208.52.50, 5208.53.00, 5208.59.20, 5208.59.60, 5208.59.80, 5209.11.00, 5209.19.00, 5209.21.00, 5209.29.00, 5209.31.60, 5209.32.00, 5209.39.00, 5209.41.60, 5209.42.00, 5209.43.00, 5209.49.00, 5209.51.60, 5209.52.00, 5209.59.00, 5210.21.40, 5210.21.60, 5210.22.00, 5210.29.40, 5210.29.60, 5210.31.40, 5210.31.60, 5210.32.00, 5210.39.40, 5210.39.60, 5210.51.40, 5210.51.60, 5210.52.00, 5210.59.40, 5210.59.60, 5211.31.00, 5211.39.00, 5211.51.00, 5211.59.00, 5212.21.60, 5212.22.60, 5212.23.60, 5212.24.60, 5212.25.60, 5401.10.00, 5401.20.00, 5402.10.30, 5402.20.30, 5402.20.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.33.30, 5402.33.60, 5402.39.30, 5402.39.60, 5402.41.00, 5402.42.00, 5402.43.00, 5402.49.00, 5402.51.00, 5402.52.00, 5402.59.00, 5402.61.00, 5402.62.00, 5402.69.00, 5403.10.30, 5403.20.30, 5403.20.60, 5403.31.00, 5403.32.00, 5403.33.00, 5403.39.00, 5406.10.00, 5406.20.00, 5407.10.00, 5407.41.00, 5407.42.00, 5407.43.20, 5407.44.00, 5407.52.20, 5407.53.10, 5407.53.20, 5407.54.00, 5407.60.05, 5407.60.10, 5407.60.20, 5407.71.00, 5407.72.00, 5407.73.20, 5407.74.00, 5407.81.00, 5407.82.00, 5407.83.00, 5407.84.00, 5407.91.05, 5407.91.20, 5407.92.05, 5407.92.20, 5407.93.05, 5407.93.20, 5407.94.05, 5407.94.20, 5408.10.00, 5408.21.00, 5408.22.00, 5408.23.20, 5408.24.00, 5408.31.05, 5408.31.20, 5408.32.05, 5408.32.90, 5408.33.05, 5408.33.90, 5408.34.05, 5408.34.90, 5508.10.00, 5508.20.00, 5509.12.00, 5509.21.00, 5509.22.00, 5509.31.00, 5509.32.00, 5509.41.00, 5509.51.30, 5509.51.60, 5509.53.00, 5509.69.20, 5509.69.40, 5509.99.20, 5509.99.40, 5511.10.00, 5511.20.00, 5511.30.00, 5512.11.00, 5512.19.00, 5512.21.00, 5512.29.00, 5512.91.00, 5512.99.00, 5513.11.00, 5513.13.00, 5513.19.00, 5513.21.00, 5513.23.00, 5513.29.00, 5513.33.00, 5513.39.00, 5513.41.00, 5513.43.00, 5513.49.00, 5514.11.00, 5514.19.00, 5514.21.00, 5514.29.00, 5514.41.00, 5514.49.00, 5515.11.00, 5515.12.00, 5515.13.05, 5515.19.00, 5515.21.00, 5515.29.00, 5515.91.00, 5515.99.00, 5516.11.00, 5516.12.00, 5516.13.00, 5516.14.00, 5516.21.00, 5516.22.00, 5516.23.00, 5516.24.00, 5516.41.00, 5516.42.00, 5516.43.00, 5516.44.00, 5516.91.00, 5516.92.00, 5516.93.00, 5516.94.00, 5601.10.20, 5601.22.00, 5602.10.10, 5602.10.90, 5602.21.00, 5602.90.30, 5602.90.60, 5602.90.90, 5603.00.90, 5604.20.00, 5604.90.00, 5606.00.00, 5607.41.30, 5607.49.15, 5607.49.25, 5607.49.30, 5607.50.20, 5607.50.40, 5607.90.20, 5608.11.00, 5608.19.10, 5701.10.16, 5701.10.20, 5701.90.20, 5702.10.90, 5702.31.10, 5702.31.20, 5702.32.10, 5702.32.20, 5702.39.20, 5702.41.10, 5702.42.10, 5702.42.20, 5702.49.10, 5702.51.20, 5702.51.40, 5702.52.00, 5702.59.10, 5702.59.20, 5702.91.30, 5702.91.40, 5702.92.00, 5702.99.10, 5702.99.20, 5703.10.00, 5703.20.10, 5703.20.20, 5703.30.00, 5704.10.00, 5704.90.00, 5705.00.20, 5801.31.00, 5801.33.00, 5801.34.00, 5801.35.00, 5801.36.00, 5802.30.00, 5803.10.00, 5803.90.30, 5804.10.00, 5804.21.00, 5804.29.00, 5804.30.00, 5805.00.25, 5805.00.30, 5805.00.40, 5806.31.00, 5806.32.10, 5806.40.00, 5808.90.00, 5810.10.00, 5810.91.00, 5810.92.00, 5811.00.20, 5901.10.20, 5901.90.40, 5902.10.00, 5902.20.00, 5902.90.00, 5903.10.30, 5903.20.30, 5903.90.30, 5905.00.90, 5906.91.30, 5906.99.30, 5907.00.90, 5911.10.20, 5911.20.10, 5911.31.00, 5911.32.00, 5911.90.00, 6001.10.20, 6001.10.60, 6001.22.00, 6001.92.00, 6002.10.80, 6002.20.10, 6002.20.30, 6002.20.60, 6002.30.20, 6002.43.00, 6002.93.00, 6301.10.00, 6301.20.60, 6301.30.00, 6301.40.00, 6301.90.00, 6302.10.00, 6302.21.20, 6302.22.10, 6302.22.20, 6302.29.00, 6302.31.20, 6302.32.10, 6302.32.20, 6302.39.00, 6302.40.10, 6302.40.20, 6302.51.10, 6302.51.20, 6302.51.30, 6302.51.40, 6302.52.10, 6302.52.20, 6302.53.00, 6302.59.00, 6302.60.00, 6302.91.00, 6302.92.00, 6302.93.20, 6302.99.20, 6303.12.00, 6303.19.00, 6303.92.00, 6303.99.00, 6304.11.10, 6304.11.20, 6304.11.30, 6304.19.05, 6304.19.15, 6304.19.20, 6304.19.30, 6304.91.00, 6304.92.00, 6304.93.00, 6304.99.15, 6304.99.20, 6304.99.60, 6307.10.20, 7019.20.10, 9404.90.90.

[FR Doc. 91–24338 Filed 10–8–91; 8:45 am]

BILLING CODE 3510–DS–M

University of Nebraska-Lincoln, et al.; Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4204, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 91–137. *Applicant:* University of Nebraska-Lincoln, Department of Biochemistry, 316 Biochemistry Hall, East Campus, Lincoln, NE 68583–0718. *Instrument:* Stopped Flow Spectrophotometer. *Manufacturer:* Applied Photophysics Ltd., United Kingdom. *Intended Use:* The instrument will be used to study the rate of formation and decay of chemical intermediates which have an ultraviolet, visible, or fluorescence spectrum. Experiments will be conducted to determine the rate of reaction between proteins and substrates involved in a novel pathway of anaerobic growth and carbon dioxide fixation. *Application Received by Commissioner of Customs:* September 16, 1991.

Docket Number: 91–138. *Applicant:* University of California, Los Angeles, Department of Chemistry and Biochemistry, 405 Hilgard Avenue, Los Angeles, CA 90024–1569. *Instrument:* Mass Spectrometer System, Model Autospec. *Manufacturer:* VG Analytical Ltd., United Kingdom. *Intended Use:* The instrument will be used for the investigation of a wide variety of problems in chemistry, biochemistry, biology and medicine. This research will consist of the following: (1) Synthetic Organic Chemistry; (2) Synthesis of Antitumor Antibiotics and Alkylative Modification of Double-Stranded DNA; (3) Host Molecules that Complex and Catalyze; (4) Chiral Molecular Recognition and Principles of Carbohydrate Binding; Carriers for Membrane Transport of AID-Targeted Drugs; (5) Singlet Oxygen Chemistry; (6) Boron-10-Labeled Antibodies in Cancer Therapy; (7) Stereoselectivities of Synthetic Organic Reactions; Intramolecular 10 and 8 Electron Cycloadditions; Theory and Modeling of Macrocyclization Reactions; (8) Synthesis via Model Templated Radicals, Organometallic Stereoelectronics and Organometallic Electrocyclic Reactions; (9) Neuroreceptor Studies with Position Emission Tomography; and (10) Nuclease of 1,10-Phenanthroline-Copper. The instrument will also be used in formal courses in Advanced Organic Synthetic Chemistry as part of the training of advanced undergraduate majors and graduate students in physical methods of characterizing synthetic products. *Application Received by Commissioner of Customs:* September 18, 1991.

Docket Number: 91–139. *Applicant:* University of Minnesota, Physiology Department, 6–255 Millard Hall, 435 Delaware Street, SE, Minneapolis, MN 55455. *Instrument:* (2) Multimicroelectrode Manipulators. *Manufacturer:* Thomas Recording, West Germany. *Intended Use:* The instrument will be used for simultaneous recording of the electrical activity of cells in the brain in seven different locations. Electrodes will be advanced through the dura into the brain of experimental animals and the activity of brain cells will be recorded while the animal performs various tasks. The objective of this experiment is to elucidate the brain mechanisms underlying the generation and control of arm movements in space.

Application Received by Commissioner of Customs: September 20, 1991.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 91-24346 Filed 10-8-91; 8:45 am]

BILLING CODE 3510-DS-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

October 3, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: October 3, 1991.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6494. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for carryover, swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 55 FR 51144, published on December 12, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 3, 1991.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 7, 1990, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1991 and extends through December 31, 1991.

Effective on October 3, 1991, you are directed to amend further the directive dated December 7, 1990 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and India:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
218	8,548,740 square meters.
219	37,192,582 square meters.
313	26,293,566 square meters.
314	5,210,341 square meters.
315	8,948,485 square meters.
335	155,998 dozen.
336/636	597,251 dozen.
338/339/340	1,420,192 dozen.
342	556,500 dozen.
347/348	381,614 dozen.
363	24,854,606 numbers.
Sublevels in Group II	
237	133,155 dozen.
640	160,905 dozen.
641	977,436 dozen.
642	303,745 dozen.
647/648	429,205 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1990.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91-24330 Filed 10-8-91; 8:45 am]

BILLING CODE 3510-DR-F

Amendment of an Import Limit and Restraint Period for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of the Philippines

October 3, 1991.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending a limit and restraint period.

EFFECTIVE DATE: October 10, 1991.

FOR FURTHER INFORMATION CONTACT: Kim-Bang Nguyen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-6735. For information on embargoes and quota re-openings, call (202) 377-3715. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as consultations have not yet been held on a mutually satisfactory solution on Categories 359-C/659-C, the United States Government has decided to combine the ninety-day restraint limit with the prorated specific limit, established according to the agreement. The new limit extends from July 31, 1991 through December 31, 1991; and, as a result, the limit for Categories 359-C/659-C, which is currently filled, will re-open.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of the Philippines, further notice will be published in the **Federal Register.**

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also

see 56 FR 41831, published on August 23, 1991.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

October 3, 1991.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on August 19, 1991, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in the Philippines and exported during the ninety-day period which began on July 31, 1991 and extends through October 28, 1991.

Effective on October 10, 1991, you are directed to amend the August 19, 1991 directive to extend the restraint period for Categories 359–C/659–C [1] through December 31, 1991 at an increased level of 247,972 kilograms [2].

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 91–24329 Filed 10–8–91; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, November 5, 1991; Tuesday, November 12, 1991; Tuesday, November 19, 1991; and Tuesday, November 26, 1991, at 10 a.m. in room 1E801, The Pentagon, Washington, DC.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Force Management and Personnel) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC. 20301.

Dated: October 3, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91–24227 Filed 10–8–91; 8:45 am]

BILLING CODE 3810–01–M

Department of the Air Force

Intent To Prepare Environmental Impact Statement for the Partial Disposal and Reuse of MacDill AFB, Florida

The United States Air Force will prepare an Environmental Impact Statement (EIS) to assess the potential environmental impacts of the partial disposal and reuse of portions of the property that is now MacDill Air Force Base (AFB) near Tampa, Florida.

The EIS will address the partial realignment of the base as well as disposal of portions of the property to public or private entities and the potential impacts of reuse alternatives. All available property will be disposed of in accordance with provisions of the Defense Base Closure and Realignment Act of 1990 (Public Law 101–510, Title XXIX), and applicable federal property disposal regulations.

The Air Force is planned to conduct a scoping meeting in the Tampa area during November 1991. Notice of the time and place of the meeting will be made available to public officials and local news media outlets prior to the meeting. The purpose of the meeting is to determine the environmental issues and concerns to be analyzed, to solicit comments on the proposed action and to solicit proposed disposal and reuse alternatives that should be addressed in the EIS. In soliciting disposal and reuse inputs, the Air Force intends to consider all reasonable alternatives to the proposed action offered by any federal, state, or local government agency and any federally-sponsored or private entity or individual with an interest in acquiring available property at MacDill AFB. The resulting environmental impacts will be considered in making disposal decisions to be documented in the Air Force's Final Disposal Plan for portions of MacDill AFB.

To ensure the Air Force will have sufficient time to consider public inputs on issues to be included in the EIS, and disposal alternatives to be included in the Final Disposal Plan, comments and reuse proposals should be forwarded to the address listed below by December 1, 1991. However, the Air Force will accept comments at the address below at any time during the environmental impact analysis process.

For further information concerning the study of MacDill AFB disposal and reuse, and EIS activities, contact: Lt. Colonel Tom Bartol, AFCEE/ESE, Norton AFB, California 92409–6448.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 91–24282 Filed 10–8–91; 8:45 am]

BILLING CODE 3910–01–M

Intent to Prepare Environmental Impact Statements for Disposal and Reuse of Thirteen Air Force Bases

The United States Air Force will prepare thirteen environmental impact statements (EISs) to assess the potential environmental impacts of disposal and reuse of the following Air Force bases recently directed to be closed under the

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] The limit has not been adjusted to account for any imports exported after July 30, 1991.

provisions of the Defense Base Closure and Realignment Act of 1990 (Public Law 101–510, title XXIX):

Closing Base

Bergstrom AFB, Austin, Texas
Carswell AFB, Fort Worth, Texas
Castle AFB, Merced, California
Eaker AFB, Blytheville, Arkansas
England AFB, Alexandria, Louisiana
Grissom AFB, Peru, Indiana
Loring AFB, Limestone, Maine
Lowry AFB, Denver, Colorado
Myrtle Beach AFB, Myrtle Beach, South Carolina
Richards Gebaur ARS, Kansas City, Missouri
Rickenbacker AGB, Columbus, Ohio
Williams AFB, Chandler, Arizona
Wurtsmith AFB, Oscoda, Michigan

Each EIS will address the disposal of the property to public or private entities and the potential impacts of reuse alternatives. All available property will be disposed of in accordance with provisions of Public Law 101–510 and applicable federal property disposal regulations.

The Air Force plans to conduct a scoping and screening meeting within the local area for each base during October and November 1991. Notice of the time and place of each meeting will be made available to public officials and local news media outlets once it has been finalized. The purpose of each meeting is to determine the environmental issues and concerns to be analyzed for the base disposal and reuse in that area, to solicit comments on the proposed action and to solicit proposed disposal and reuse alternatives that should be addressed in the EIS for that base. In soliciting disposal and reuse inputs, the Air Force intends to consider all reasonable alternatives offered by any federal, state, or local government agency and any federally-sponsored or private entity or individual with an interest in acquiring available property at one of the listed closing bases. The resulting environmental impacts will be considered in making disposal decisions to be documented in the Air Force's final disposal plan for each base.

To ensure the Air Force will have sufficient time to consider public inputs on issues to be included in the EISs, and disposal alternatives to be included in the final disposal plans, comments and reuse proposals should be forwarded to the address listed below by December 1, 1991. However, the Air Force will accept comments at the address below at any time during the environmental impact analysis process.

For further information concerning study of these base disposal and reuse EIS activities, contact: Lt. Col Tom Bartol, AFCEE/ESE, Norton AFB, California 92409–6448.

Patsy J. Connor,

Air Force Federal Register Liaison Officer.

[FR Doc. 91–24283 Filed 10–8–91; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Privacy Act of 1974; Record System Amendments

AGENCY: Department of the Army, DOD.

ACTION: Amendment of a records systems.

SUMMARY: The Department of the Army proposes to amend twenty-six record systems in its inventory of record system notices subject to the Privacy Act of 1974, as amended (5 U.S.C. § 552a).

DATES: The proposed actions will be effective without further notice on November 8, 1991, unless comments are received which would result in a contrary determination.

ADDRESSES: Send comments to Ms. Alma Lopez, Office of Systems Management Branch (ASOP-MP) Ft. Huachuca, AZ 85613–5000.

SUPPLEMENTARY INFORMATION: The Department of the Army record system notices subject to the Privacy Act of 1974, as amended, have been published in the **Federal Register** as follows:

50 FR 22090, May 29, 1985 (DoD Compilation, changes follow)
51 FR 23576, Jun. 30, 1986
51 FR 30900, Aug. 29, 1986
51 FR 40479, Nov. 7, 1986
51 FR 44361, Dec. 9, 1986
52 FR 11847, Apr. 13, 1987
52 FR 18798, May 19, 1987
52 FR 25905, Jul. 9, 1987
52 FR 32329, Aug. 27, 1987
52 FR 43932, Nov. 17, 1987
53 FR 12971, Apr. 20, 1988
53 FR 16575, May 10, 1988
53 FR 21509, Jun. 8, 1988
53 FR 28247, Jul. 27, 1988
53 FR 28249, Jul. 27, 1988
53 FR 28430, Jul. 28, 1988
53 FR 34576, Sep. 7, 1988
53 FR 49586, Dec. 8, 1988
53 FR 51580, Dec. 22, 1988
54 FR 10034, Mar. 9, 1989
54 FR 11790, Mar. 22, 1989
54 FR 14835, Apr. 13, 1989
54 FR 46965, Nov. 8, 1989
54 FR 50268, Dec. 5, 1989
55 FR 13935, Apr. 13, 1990
55 FR 21897, May 30, 1990 (Army Address Directory)
55 FR 41743, Oct. 15, 1990
55 FR 46707, Nov. 6, 1990
55 FR 46708, Nov. 6, 1990
55 FR 48678, Nov. 21, 1990
55 FR 48671, Nov. 21, 1990 (Amended ID Numbers)
55 FR 51467, Dec. 14, 1990
56 FR 7018, Feb. 21, 1991
56 FR 15593, Apr. 17, 1991
56 FR 21134, May 7, 1991
56 FR 27949, Jun. 18, 1991
56 FR 42986, Aug. 30, 1991
56 FR 42991, Aug. 30, 1991
56 FR 42995, Aug. 30, 1991
56 FR 46162, Sep. 10, 1991

The amendments are not within the purview of subsection (r) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), which requires the submission of an altered system report. The specific changes to the record systems being amended are set forth below, followed by the record system notices, as amended, published in their entirety.

Dated: October 2, 1991.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0001aTAPC

System name:

Office Visitor/Commercial Solicitor Files (50 FR 22111, May 29, 1985).

Changes:

* * * * *

System manager(s) and address(es):

Delete entry and replace with "Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the commander/supervisor maintaining the information.

Individual should provide the full name and other information verifiable from the record itself."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the commander/supervisor maintaining the information.

Individual should provide the full name and other information verifiable from the record itself."

* * * * *

A0001aTAPC

SYSTEM NAME:

Office Visitor/Commercial Solicitor Files.

SYSTEM LOCATION:

Segments may be maintained at Headquarters, Department of the Army, staff, field operating agencies, commands, installations, and activities. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Visitors to Army installations/activities and/or commercial solicitors who represent an individual, firm, corporation, academic institution, or other enterprise involved in official or business transactions with the Department of the Army and/or its elements.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, name and address of firm represented, person/office visited, purpose of visit, and status of individual as regards past or present affiliation with the Department of Defense.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013.

PURPOSE(S):

To provide information to officials of the Army responsible for monitoring/controlling visitor's/solicitor's status and determining purpose of visit so as to preclude conflict of interest.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By name of visitor/solicitor.

SAFEGUARDS:

Records are maintained in file cabinets with access limited to officials having need therefor.

RETENTION AND DISPOSAL:

Retained for one year after which records are destroyed.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the commander/supervisor maintaining the information. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

Individual should provide the full name and other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the commander/supervisor maintaining the information. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

Individual should provide the full name and other information verifiable from the record itself.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORDS SOURCE CATEGORIES:

From the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0001bTAPC

System name:

Administrative Military Personnel Records (50 FR 22112, May 29, 1985).

Changes:

System name:

Delete entry and replace with "Unit Administrative Military Personnel Records."

Categories of individuals covered by the system:

Delete "i.e., company, platoon/squad or comparable office size" and replace with "i.e., battalion PAC/S1, company, platoon/squad, or comparable office size".

* * * * *

Authority for maintenance of the system:

Add "Executive Order 9397" to the end of the entry.

Purpose:

After the word "supervisors" insert "/unit commanders".

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry and replace with "The Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this system."

* * * * *

Safeguards:

Delete "380–380" and replace with "380–19, Information Systems Security,".

Retention and disposal:

Delete entry and replace with "Records are destroyed not later than one year after departure of the individual."

System manager(s) and address(es):

Delete entry and replace with "Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address inquiries to their immediate supervisor.

Individual should provide the full name, Social Security Number, and particulars which facilitate locating the record."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address inquiries to the custodian of the record at the location to which assigned/attached.

Individual should provide the full name, Social Security Number, and particulars which facilitate locating the record."

* * * * *

Record source categories:

Delete "his/her" and replace with "individual's".

* * * * *

A0001bTAPC

SYSTEM NAME:

Unit Administrative Military Personnel Records.

SYSTEM LOCATION:

Headquarters, Department of the Army Staff, major commands, field operating agencies, installations and activities performing unit level administration for military personnel,

whether active, inactive (reservist MOEDES) and including the National Guard. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel (and in some instances, their dependents) at the local supervisory level (i.e., battalion PAC/S1, company, platoon/squad, or comparable office size) when the individual's Military Personnel Records Jacket (MPRJ) or other personnel records are maintained elsewhere.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records/documents of a temporary nature which are needed in the day-to-day administration/supervision of the individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. § 301 and Executive Order 9397.

PURPOSES:

To provide supervisors/unit commanders a ready source of information for day-to-day operations and administrative determinations pertaining to assigned/attached personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, index-cards, microfiche, magnetic tape/disk.

RETRIEVABILITY:

By individual's surname or Social Security Number.

SAFEGUARDS:

Information is stored in locked rooms/buildings with access restricted to individuals whose duties require a need-to-know. Where information exists on word processing disk/diskettes/tapes or in automated media, the administrative, physical, and technical requirements of Army Regulation 380–19, Information Systems Security, are assured to preclude improper use or inadvertent disclosure.

RETENTION AND DISPOSAL:

Records are destroyed not later than I year after departure of the individual.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address inquiries to their immediate supervisor.

Individual should provide the full name, Social Security Number, and particulars which facilitate locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address inquiries to the custodian of the record at the location to which assigned/attached.

Individual should provide the full name, Social Security Number, and particulars which facilitate locating the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Copy of documents in individual's Official Military Personnel File, Military Personnel Records Jacket, Career Management Information File, individual's supervisor, other Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A065TAPC

System name:

Postal and Mail Service System (50 FR 22238, May 29, 1985).

Changes:

System identification number:

Delete number and replace with "A0065TAPC".

* * * * *

Categories of individuals covered by the system:

Delete entry and replace with "Persons designated as postal clerks; military personnel assigned/attached to Army installations who require mail handling service."

Categories of records in the system:

Delete entry and replace with "DD Form 285 designating Army postal clerks/NCO's/supervisors/orderlies; locator cards (DA Form 3955) comprising a directory of individuals assigned, enroute, and/or departing given installation, showing individual's full name, grade, current mailing address, date of assignment/detachment, and Social Security Number (latter is voluntary)."

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry and replace with "Information may be disclosed to the U.S. Postal Service.

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices also apply to this system."

* * * * *

Retrievability:

Delete entry and replace with "By individual's surname and/or Social Security Number."

* * * * *

Retention and disposal:

Delete entry and replace with "Documents designating postal personnel are destroyed two years from the termination/revocation date of designation. Directory locator cards (DA Form 3955) are retained for 12 months following members departure from unit."

System manager(s) and address(es):

Delete entry and replace with "Commander U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Postal Director at the unit where assigned or employed.

Individual should provide the full name, Social Security Number, rank/grade, and any other information that will assist in locating the records."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Postal Director at the unit where assigned or employed.

Individual should provide the full name, Social Security Number, rank/grade, and any other information that will assist in locating the records.

Personal visits may be made; individual must furnish proof of identity."

* * * * *

A0065TAPC

SYSTEM NAME:

Postal and Mail Service System.

SYSTEM LOCATION:

Postal facilities at Army headquarters offices, commands, and installations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons designated as postal clerks; military personnel assigned/attached to Army installations who require mail handling service.

CATEGORIES OF RECORDS IN THE SYSTEM:

DD Form 285 designating Army postal clerks/NCO's/supervisors/orderlies; locator cards (DA Form 3955) comprising a directory of individuals assigned, enroute, and/or departing given installation, showing individual's full name, grade, current mailing address, date of assignment/detachment, and SSN (latter is voluntary).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and Executive Order 9397.

PURPOSE(S):

To designate persons authorized to perform Army postal functions; to maintain current addresses of persons arriving/departing units for the purpose of handling personal mail.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the U.S. Postal Service.

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Cards, paper records, microfiche, word processing disc.

RETRIEVABILITY:

By individual's surname and/or Social Security Number.

SAFEGUARDS:

Records are located in secured buildings, accessible only to designated persons having an official need for the information. Where word processing equipment is used, information is protected by a password system; when not in use, word processing equipment is locked.

RETENTION AND DISPOSAL:

Documents designating postal personnel are destroyed two years from the termination/revocation date of designation. Directory locator cards (DA Form 3955) are retained for 12 months after member's departure from unit.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURES:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Postal Director at the unit where assigned or employed.

Individual should provide the full name, Social Security Number, rank/grade, and any other information that will assist in locating the records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Postal Director at the unit where assigned or employed.

Individual should provide the full name, Social Security Number, rank/grade, and any other information that will assist in locating the records.

Personal visits may be made; individual must furnish proof of identity.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, unit commanders and Army postal officers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0210-10TAPC

System name:

Departure Clearance Files (50 FR 22178, May 29, 1985).

Changes:

* * * * *

System manager(s) and address(es):

Delete entry and replace with "Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the administrative office of the installation/activity to which the individual had been assigned.

"Individual should provide the full name, departure date, location of last employing office, and signature."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the administrative office of the installation/activity to which the individual had been assigned.

Individual should provide the full name, departure date, location of last employing office, and signature."

* * * * *

A0210–10TAPC

SYSTEM NAME:

Departure Clearance Files.

SYSTEM LOCATION:

Administrative offices of Army Staff agencies, field operating commands, installations, or activities, Army-wide.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Army military and civilian personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

DA Form 137 (Installation Clearance Record), copy of receipts or documents evidencing payment of telephone bills, return of material held on memorandum receipt, and similar clearance matters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013.

PURPOSE(S):

To verify that an individual has obtained clearance from the Army Staff agency or installation's facilities and has accomplished his/her personal and official obligations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By surname of departing individual.

SAFEGUARDS:

Information is accessed only by designated persons having official need therefor.

RETENTION AND DISPOSAL:

Destroyed after 1 year.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this records system should address written inquiries to the administrative office of the installation/activity to which the individual had been assigned.

Individual should provide the full name, departure date, location of last employing office, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the administrative office of the installation/activity to which the individual had been assigned.

Individual should provide the full name, departure date, location of last employing office, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0210–190TAPC

System name:

Individual Gravesite Reservation Files (50 FR 22167, May 29, 1985).

Changes:

* * * * *

System manager(s) and address(es):

Delete entry and replace with "Commander, Military District of Washington, Fort Lesley J. McNair, Washington, DC 20319; Soldiers' and Airmen's Home National Cemetery, Washington, DC 20011; Commander, U.S. Total Army Personnel Command, Alexandria, VA 22332–0400 for selective Army post cemeteries.

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the appropriate system manager.

Individual should provide sufficient details to permit locating pertinent records and signature."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the appropriate system manager.

Individual should provide sufficient details to permit locating pertinent records and signature."

* * * * *

A0210–190TAPC

SYSTEM NAME:

Individual Gravesite Reservation Files.

SYSTEM LOCATION:

Commander, Military District of Washington, Fort Lesley J. McNair, Washington, DC 20319; Soldiers' and Airmen's Home National Cemetery, Washington, DC 20011; Commander, U.S. Total Army Personnel Command, Alexandria, VA 22332–0400 for selective Army post cemeteries.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active and former Armed Forces personnel and their dependents who reserved grave plots in either Arlington National Cemetery Soldiers' Home National Cemetery, or Army post cemeteries prior to 1961.

CATEGORIES OF RECORDS IN THE SYSTEM:

Gravesite reservations (DA Forms 2122, 2123); reservist's name, address, number and section of grave reserved, military service, or relationship to service member.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013.

PURPOSE(S):

To maintain records of individuals holding gravesite reservations in Army national or post cemeteries made prior to 1961; to conduct periodic surveys to determine validity of such reservations; to respond to inquiries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; cards.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel having official need therefor in the performance of their duties.

RETENTION AND DISPOSAL:

Destroyed when gravesite reservation is used or canceled.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Commander, Military District of Washington, Fort Lesley J. McNair, Washington, DC 20319; Soldiers' and Airmen's Home National Cemetery, Washington, DC 20011; Commander, U.S. Total Army Personnel Command, Alexandria, VA 22332–0400 for selective Army post cemeteries.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this records system should address written inquiries to the appropriate system manager.

Individual should provide sufficient details to permit locating pertinent records and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the appropriate system manager.

Individual should provide sufficient details to permit locating pertinent records and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are

contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the reservist, his/her representative or next-of-kin; Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600–8TAPC

System name:

Major Command Military Personnel Management Reporting System (50 FR 22170, May 29, 1985).

Changes:

System identification number:

Identification number should read "A0600–8aTAPC".

* * * * *

System manager(s) and address(es):

Delete entry and replace with "Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400".

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the commander of the major command where assigned or attached.

Individual should provide the full name, Social Security Number, current address, and sufficient details to permit locating pertinent records."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written to the commander of the major command where assigned or attached.

Individual should provide the full name, Social Security Number, current address, and sufficient details to permit locating pertinent records."

* * * * *

A0600–8aTAPC

SYSTEM NAME:

Major Command Military Personnel Management Reporting System.

SYSTEM LOCATION:

Decentralized to each major Army command.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty commissioned officers, warrant officers and enlisted personnel assigned or projected for assignment to the major command.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, sex, race; marital status and dependents; physical category code; component; expiration of term of service; additional pay; date of rank; annual efficiency index; last overseas short tour, procurement actions; unit identification code; Department of Army location, assignment and status codes; permanent change of station date; date joined/departed current command; gaining unit, location, assignment and status codes; reporting date; date returned from overseas; previous unit identification code, assignment and type transfer strength; primary and secondary military occupational specialties (MOS), secondary MOS evaluation score; duty MOS; away without leave data; date agreements and related documents forms, and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C 301; 10 U.S.C. 3013; and Executive Order 9397.

PURPOSE(S):

This system extracts data from Officer and Enlisted Personnel Files and records related to organizations, personnel authorized and assigned strength and prepares reports designed to aid major Army commanders in managing military personnel functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer magnetic tapes, discs, and printouts; microfiche.

RETRIEVABILITY:

By name, Social Security Number, or other unique identifying characteristics.

SAFEGUARDS:

Records are protected by physical security devices, computer hardware and software safeguard features, and personnel clearances for individuals working with the system.

RETENTION AND DISPOSAL:

Destroyed after 90 days.

SYSTEM MANAGER(S) AND ADDRESS (ES):

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the commander of the major command where assigned or attached.

Individual should provide the full name, Social Security Number, current address, and sufficient details to permit locating pertinent records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written to the commander of the major command where assigned or attached.

Individual should provide the full name, Social Security Number, current address, and sufficient details to permit locating pertinent records.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORDS SOURCE CATEGORIES:

From automated systems interfaces based on the Headquarters, Department of Army data base.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600–8bTAPC

System name:

Standard Installation/Division Personnel System (SIDPERS) (50 FR 22198, May 29, 1985).

Changes:

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System location:

Add "or at local installation" after "Fort Ord, CA."

* * * * *

Safeguards:

Delete "380–380" and replace with "380–19, Information Systems Security,".

* * * * *

System manager(s) and address(es):

Delete entry and replace with "Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is

contained in this record system should address written inquiries to their local commander.

Individual should provide the full name, Social Security Number, and current address.

Personal visits may be made; individual must furnish proof of identity."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system may visit or address written inquiries to the servicing military personnel office or headquarters of the organization/station of the service member.

Individual should provide the full name, Social Security Number, current address.

Personal visits may be made; individual must furnish proof of identity."

* * * * *

A0600-8bTAPC

SYSTEM NAME:

Standard Installation/Division Personnel System (SIDPERS)

SYSTEM LOCATION:

Decentralized to local installation level of the Army. Information is stored on computer media at five regional data centers located in the Washington, DC area and near Fort McPherson, GA; Fort Knox, KY; Fort Hood, TX; and Fort Ord, CA or at local installations. Access to and processing of the information is through distributed data processing centers located at installations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All active duty Army personnel and personnel attached from the National Guard and/or Army Reserves based upon local option.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, sex, race, citizenship, status, religious denomination, marital status, number of dependents, date of birth, physical profile, ethnic group, grade and date of rank, term of service for enlisted personnel, service agreement for non-regular officers, service data and dates, unit of assignment, military occupational specialty, additional skill identifiers, civilian/military education levels, languages, assignment eligibility and availability and termination date thereof, security status, special pay and bonus, and suspense termination date thereof, suspension of favorable personnel action indicator, Privacy Act disputed record indicator, and similar relevant data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 3013; and Executive Order 9397.

PURPOSE(S):

To support personnel management decisions concerning the selection, distribution, and utilization of all personnel in military duties, strength accounting, and manpower management.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes, discs, diskettes, microfiche, punched cards, and computer printouts.

RETRIEVABILITY:

By name, Social Security Number, or other individually identifying characteristics. The automated system provides a query capability allowing users to retrieve personnel data via CRT terminal.

SAFEGUARDS:

Regional data centers are contractor-operated under an Army approved security program. Potential contractor personnel are security screened; contractor employees receive a security briefing and participate in an ongoing security education program under the regional data security officer.

Regional data centers are connected through a communications network to 44 distributed data processing centers at Army installations. Technical, physical, and administrative safeguards required by Army Regulation 380-19, Information Systems Security are met at installation data processing centers and information is secured in locked rooms with limited/controlled access. Data are available only to installation personnel responsible for system operation and maintenance. Terminals not in the data processing center are under the supervision of a terminal area security officer at each remote location protecting them from unauthorized use. Access to information is also controlled by a system of assigned passwords for authorized users of terminals.

RETENTION AND DISPOSAL:

Data retained until updated or service of individual is terminated with earlier information erased. Hard copy printouts are retained in accordance with Department of the Army Pamphlet 600-8 series.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Commander, U.S. Total Army Personnel Center, 200 Stovall Street, Alexandria, VA 22332-0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to their local commander.

Individual should provide the full name, Social Security Number, and current address.

Personal visits may be made; individual must furnish proof of identity.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system may visit or address written inquiries to the servicing military personnel office or headquarters of the organization/station of the service member.

Individual should provide the full name, Social Security Number, current address.

Personal visits may be made; individual must furnish proof of identity.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, commanders, Army records and documents, other federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600-8-1aTAPC

System name:

Emergency Data Files (50 FR 22187, May 29, 1985).

Change(s):

* * * * *

System location:

Delete entry and replace with "U.S. Total Army Personnel Command, Alexandria, VA 22332-0400. Copy of Record of Emergency Data (DD Form 93)

exists in soldier's field Military Personnel Records Jacket (MPRJ)."

* * * *

System manager(s) and address(es):

Delete the entire entry and replace with the following: "Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400."

Notification procedure:

Delete the and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC-PEC, Alexandria, VA 22332–0400.

Individual should provide the full name and other information that can be verified from the file."

Record access procedures:

Delete the and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC-PEC, Alexandria, VA 22332–0400.

Individual should provide the full name and other information that can be verified from the file."

* * * * *

A0600–S–1aTAPC

SYSTEM NAME:

Emergency Data Files.

SYSTEM LOCATION:

U.S. Total Army Personnel Command, Alexandria, VA 22332–0400. Copy of Record of Emergency Data (DD Form 93) exists in soldier's field Military Personnel Records Jacket (MPRJ).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military personnel on active duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains DD Form 93, Record of Emergency Data. Document reflects the service member's name; Social Security Number; spouse and children's names and current address; persons to be and not to be notified in the event of death or injury; information on wills, insurance, and other such information; and designation of beneficiaries for certain benefits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and Executive Order 9397.

PURPOSE(S):

To document names and addresses of person(s) to be notified in emergency situations; to determine lawful disposition of service member's pay and allowances when that member is missing, captured, or becomes a casualty.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Machine processed card in vertical file; paper copy in MPRJ.

RETRIEVABILITY:

Card is retrieved by Social Security Number; paper copy in MPRJ is retrieved by soldier's surname.

SAFEGUARDS:

Building employs security guards; the office in which record is located is in operation 24 hours a day, 7 days a week. Records are accessible only to authorized personnel.

RETENTION AND DISPOSAL:

The Emergency Data Card is retained until individual separates from the Army; then destroyed. Copy in the MPRJ is retired with the MPRJ. If individual dies, the form becomes part of the casualty case file which is retired upon completion to the National Personnel Records Center (Military), St. Louis, MO 63132.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–PEC, Alexandria, VA 22332–0400.

Individual should provide the full name and other information that can be verified from the file.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–PEC, Alexandria, VA 22332–0400.

Individual should provide the full name and other information that can be verified from the file.

CONTESTING RECORD PROCEDURES:

The Army's rules for contesting contents and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Service member.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600–8–1bTAPC

System name:

Line of Duty Investigations (50 FR 22190, May 29, 1985).

Change(s)

* * * * *

System location:

Deleted entry and replace with "Personnel Plans and Actions Branch, Personnel Service Center at Army Installations; Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249; U.S. Total Army Personnel Command, Alexandria, VA 22332–0400; U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200; National Personnel Records Center (Military), 9700 Page Boulevard, St. Louis, MO 63132–5200; National Guard Bureau, 5109 Leesburg Pike, Falls Church, VA 22041–3258."

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete "Veterans Administration" and replace with "Department of Veterans Affairs".

* * * * *

System manager(s) and address(es):

Delete entry and replace with "Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249 (for enlisted personnel on active duty);

Commander, U.S. Total Army Personnel Command, ATTN: TAPC–MSR, Alexandria, VA 22332–0400 (for officers on active duty); Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200 (for Army reserve personnel); National Personnel Records Center (Military), 9700 Page Boulevard, St. Louis, MO 63132–5200 (for separated enlisted and officer personnel); National Guard Bureau, 5109 Leesburg Pike, Falls Church, VA 22041–3258 (for full-time National Guard Duty under 32 U.S.C., those in federalized status, or those attending active Army service school).

Individuals should provide the full name, Social Security Number, present address, and signature."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249 (for enlisted personnel on active duty); Commander, U.S. Total Army Personnel Command, ATTN: TAPC–MSR, Alexandria, VA 22332–0400 (for officers on active duty); Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200 (for Army reserve personnel); National Personnel Records Center (Military), 9700 Page Boulevard, St. Louis, MO 63132–5200 (for separated enlisted and officer personnel); National Guard Bureau, 5109 Leesburg Pike, Falls Church, VA 22041 (for full-time National Guard Duty under 32 U.S.C., those in federalized status, or those attending active Army service school).

Individuals should provide the full name, Social Security Number, present address, and signature."

* * * * *

A0600–8–1bTAPC

SYSTEM NAME:

Line of Duty Investigations.

SYSTEM LOCATION:

Personnel Plans and Actions Branch, Personnel Service Center at Army Installations; Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249; U.S. Total Army Personnel Command, Alexandria, VA 22332–0400; U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200; National Personnel Records Center (Military), 9700 Page Boulevard, St. Louis, MO 63132–5200; National Guard Bureau, 5109 Leesburg Pike, Falls Church, VA 22041–3258.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Service members who have been injured, are diseased, or deceased.

CATEGORIES OF RECORDS IN THE SYSTEM:

The DA Form 2173 (Statement of Medical Examination and Duty Status); DD Form 261 (Report of Investigation—Line of Duty and Misconduct Status); and supporting documents such as military police reports, accident reports, witness statements, and appointment instruments, and action on appeals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 972, 1204, 1207, 3822; 37 U.S.C. 802; and Executive Order 9397.

PURPOSE(S):

To review facts and circumstances of service member's injury and render decision having the effect of approving/denying certain military benefits, pay and allowances.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be provided to the Department of Veterans Affairs or other government agencies, to include state agencies, for a determination of the service member's entitlement to benefits.

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; microfiche.

RETRIEVABILITY:

By service member's surname.

SAFEGUARDS:

Records are maintained in metal file cabinets accessible only to designated authorized personnel.

RETENTION AND DISPOSAL:

The original is a permanent part of member's Official Military Personnel File. Copies filed in offices of the investigating officer, unit commander, appointing authority, and final reviewing authority are destroyed after 5 years.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURES:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249 (for enlisted personnel on active duty); Commander, U.S. Total Army Personnel Command, ATTN: TAPC–MSR, Alexandria, VA 22332–0400 (for officers on active duty); Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200 (for Army reserve personnel); National Personnel Records Center (Military), 9700 Page Boulevard, St. Louis, MO 63132–5200 (for separated enlisted and officer personnel); National Guard Bureau, 5109 Leesburg Pike, Falls Church, VA 22041–3258 (for full-time National Guard Duty under 32 U.S.C., those in federalized status, or those attending active Army service school).

Individuals should provide the full name, Social Security Number, present address, and signature."

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249 (for enlisted personnel on active duty); Commander, U.S. Total Army Personnel Command, ATTN: TAPC–MSR, Alexandria, VA 22332–0400 (for officers on active duty); Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200 (for Army reserve personnel); National Personnel Records Center (Military), 9700 Page Boulevard, St. Louis, MO 63132–5200 (for separated enlisted and officer personnel); National Guard Bureau, 5109 Leesburg Pike, Falls Church, VA 22041–3258 (for full-time National Guard Duty under 32 U.S.C., those in federalized status, or those attending active Army service school).

Individuals should provide the full name, Social Security Number, present address, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32

CFR part 505; or may be obtained from the system manager.

Appeals of determinations by authority of the Secretary of the Army are governed by AR 600–8–1, Army Casualty and Memorial Affairs and Line of Duty Investigations; collateral review of decided cases is limited to questions of completeness of the records of such determinations.

RECORD SOURCE CATEGORIES:

From the applicant, medical records, DA Form 2173, service member's commander, official Army records and reports, witness statements.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600–8–1cTAPC

System name:

Casualty Information System (CIS) (50 FR 22190, May 29, 1985).

Changes:

* * * * *

System location:

Delete entry and replace with "U.S. Total Army Personnel Command, 2461 Eisenhower Avenue, Alexandria, VA 22331–0481."

Categories of individuals covered by the system:

Delete entry and replace with "Army personnel who are reported as casualties in accordance with Army Regulation 600–8–1, Army Casualty and Memorial Affairs and Line of Duty Administrative Procedures."

Categories of records in the system:

Delete "DD Form 1300, notification/certificate of death" and replace with "Military Personnel Records Jacket (MPRJ), health/dental records, all correspondence between Department of the Army and soldier, soldier's primary next of kin/secondary next of kin, inquiries from other agencies and individuals; DD Form 1300, Report of Casualty."

* * * * *

Purpose(s):

Add "or other status" after "casualty/death".

* * * * *

System manager(s) and address(es):

Delete entry and replace with "Commander, U.S. Total Army Personnel Command, 2461 Eisenhower Avenue, Alexandria, VA 22331–0481."

Notification procedure:

Delete and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–PEC, 2461 Eisenhower Avenue, Alexandria, VA 22331–0481.

Individual should provide the full name, current address and telephone number, and should identify the person who is the subject of the inquiry by name, rank and Social Security Number."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–PEC, 2461 Eisenhower Avenue, Alexandria, VA 22331–0481.

Individual should provide the full name, current address and telephone number, and should identify the person who is the subject of the inquiry by name, rank and Social Security Number."

* * * * *

Record source categories:

Delete entry and replace with "From casualty reports received from Army commanders or from investigations conducted by Army commanders under AR 15–6, Procedures for Investigating Officers and Boards of Officers."

* * * * *

A0600–8–1cTAPC

SYSTEM NAME:

Casualty Information System (CIS).

SYSTEM LOCATION:

U.S. Total Army Personnel Command, 2461 Eisenhower Avenue, Alexandria, VA 22331–0481.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army personnel who are reported as casualties in accordance with Army Regulation 600–8–1, Army Casualty and Memorial Affairs and Line of Duty Administrative Procedures.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number, date of birth, branch of service, organization, duty, military occupational specialty (MOS), rank, sex, race, religion, home of record, and other pertinent information; Military Personnel Records Jacket (MPRJ), health/dental records, all correspondence between Department of the Army and soldier, soldier's primary next of kin/secondary next of kin, inquiries from other agencies and individuals, DD Form 1300 (Report of Casualty).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013; Pub. L. 93–289; and Executive Order 9397.

PURPOSE(S):

To respond to inquiries; to provide statistical data comprising type, number, place and cause of incident to Army members.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes, computer printouts, punch cards, paper records in file cabinets.

RETRIEVABILITY:

By individual's name and/or Social Security Number or any other data element.

SAFEGUARDS:

All information is restricted to a secure area in buildings which employ security guards.

Computer printouts and magnetic tapes and files are protected by password known only to properly screened personnel possessing special authorization for access.

RETENTION AND DISPOSAL:

Records are permanent.

SYSTEM MANAGER AND ADDRESS(ES):

Commander, U.S. Total Army Personnel Command, 2461 Eisenhower Avenue, Alexandria, VA 22331–0481.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–PEC, 2461 Eisenhower Avenue, Alexandria, VA 22331–0481, telephone (202) 325–0719.

Individual should provide the full name, current address and telephone number, and should identify the person

who is the subject of the inquiry by name, rank and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–PEC, 2461 Eisenhower Avenue, Alexandria, VA 22331–0481, telephone (202) 325–0719.

Individual should provide the full name, current address and telephone number, and should identify the person who is the subject of the inquiry by name, rank and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From casualty reports received from Army commanders and from investigations conducted by Army commanders under AR 15–6, Procedures for Investigating Officers and Boards of Officers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0600–200TAPC

System name:

Classification, Reclassification, Utilization of Soldiers (50 FR 22169, May 29, 1985).

Changes:

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System location:

Delete entry and replace with "U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400."

* * * * *

System manager(s) and addresses:

Delete entry and replace with "Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–EP, 200 Stovall Street Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, current address, and signature."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–EP, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, current address, and signature."

* * * * *

A0600–200TAPC

SYSTEM NAME:

Classification, Reclassification, Utilization of Soldiers.

SYSTEM LOCATION:

U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former Army members in enlisted grades E1 through E9.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains name, Social Security Number, grade, military occupational specialty (MOS), evaluation test data, Enlisted Evaluation Report data, and additional information substantiating the soldier's or Army's request for exception to or interpretation of regulatory guidance for the classification, reclassification or utilization of soldiers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 3013; and Executive Order 9397.

PURPOSE(S):

To perform the objective of maintaining a balance of authorization versus requirements by military occupational specialty within each career management field.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are accessed only by designated officials having official need therefore in the performance of official duties. Building housing records are protected by security guards.

RETENTION AND DISPOSAL:

Destroyed after 2 years by shredding.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–EP, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, current address, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–EP, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, current address, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; Army personnel records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0601–100TAPC

System name:

Officer Appointment Files (50 FR 22177, May 29, 1985)

Changes:

* * * * *

System location:

Delete entry and replace with "U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400. Segments exist at Army installations and commands. Official mailing addresses are published as an

appendix to the Army's compilation of record systems notices."

* * * * *

System manager(s) and address(es):

Delete entry and replace with "Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Army installation in which application was sent or to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–OP, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, date of application, place to which sent, and any other information that will assist in locating the record."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Army installation in which application was sent or to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–OP, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, date of application, place to which sent, and any other information that will assist in locating the record."

* * * * *

A0601–100TAPC

SYSTEM NAME:

Officer Appointment Files.

SYSTEM LOCATION:

Primary system exists at the U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400. Segments exist at Army installations and commands. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for appointment in the U.S. Army or U.S. Army Reserves.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual applications for appointment as a warrant or commissioned officer, evaluation reports, supplemental information regarding qualifications, notification of acceptance/rejection and similar relevant documents and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and Executive Order 9397.

PURPOSE(S):

To determine acceptability of applicants into the Army officer ranks.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; microfiche.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in controlled areas accessible only to designated individuals having official need therefor in the performance of their duties.

RETENTION AND DISPOSAL:

Records are destroyed after 1 year.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Army installation in which application was sent or to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–OP, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, date of application, place to which sent, and any other information that will assist in locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Army installation in which application was sent or to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–OP, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, date of application, place to which sent, and any other information that will assist in locating the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; extracts from personnel records; forms, documents, and related papers originated by or received in Army offices.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0601–210TAPC

System name:

Eligibility Determination Files (50 FR 22172, May 29, 1985).

Changes:

* * * * *

System location:

Add "–5200" to ZIP code.

* * * * *

Purpose(s):

Delete "Regulation 600–200" and replace with "Regulations 601–210, Regular Army and Army Reserve Enlistment Program, and 601–280, Army Reenlistment Program."

* * * * *

System manager(s) and address(es):

Delete entry and replace with "Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400."

* * * * *

Safeguards:

Delete entry and replace with "Records are maintained in areas accessible only to properly cleared, trained, and authorized personnel. Records are in a building secured during non-duty hours."

* * * * *

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Army Enlistment Eligibility Activity, 9700 Page Boulevard, St. Louis, MO 63132–5200.

Individual should provide the full name, Social Security Number, date of separation and service component, if

applicable, current address and telephone number, and signature".

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Enlistment Eligibility Activity, 9700 Page Boulevard, St. Louis, MO 63132–5200.

Individual should provide the full name, Social Security Number, date of separation and service component, if applicable, current address and telephone number, and signature."

* * * * *

A0601–210TAPC

SYSTEM NAME:

Eligibility Determination Files.

SYSTEM LOCATION:

U.S. Army Enlistment Eligibility Activity, 9700 Page Boulevard, St. Louis, MO 63132–5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Applicants for enlistment who require a waiver for adult felony; soldiers requesting continuation on active duty who require waiver of certain disqualifications pursuant to Army Regulation 601–210.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains requests for enlistment eligibility or waiver of disqualifications for enlistment/reenlistment, requests for grade determination, documents reflecting determinations made thereon, copies or extracted items from basic records, transmittals, and suspense documents needed to assure that requests are acted upon in a timely manner.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 333 and Executive Order 9397.

PURPOSE(S):

To evaluate waiver requests, determine appropriate action and render decision, pursuant to Army Regulations 601–210, Regular Army and Army Reserve Enlistment Program, and 601–280, Army Reenlistment Program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to properly cleared, trained, and authorized personnel. Records are in a building secured during non-duty hours.

RETENTION AND DISPOSAL:

Destroyed after 1 year by shredding.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURES:

Individuals seeking to determine if information about themselves is contained in this records system should address written inquiries to the Commander, U.S. Army Enlistment Eligibility Activity, 9700 Page Boulevard, St. Louis, MO 63132–5200.

Individual should provide the full name, Social Security Number, date of separation and service component, if applicable, current address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Army Enlistment Eligibility Activity, 9700 Page Boulevard, St. Louis, MO 63132–5200.

Individual should provide the full name, Social Security Number, date of separation and service component, if applicable, current address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rule for accessing records, ocntesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORDS SOURCE CATEGORIES:

From the individual, official military personnel records; investigative/security dossiers; medical evaluations; Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0601–280caTAPC

System name:

Qualitative Management Program Appeal File (50 FR 22169, May 29, 1985)

Changes:

* * * * *

System location:

Delete entry and replace with "U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400."

* * * * *

Categories of records in the system:

Add "/memorandum" after "bar to reenlistment letter."

* * * * *

System manager(s) and address(es):

Delete entry and replace with "Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

Notification procedures:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–PDT, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, grade, and current address."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–PDT, 200 Stovall Street, Alexandria, VA 22332–0400. Individual should provide the full name, Social Security Number, grade, and current address."

* * * * *

A0601–280aTAPC

SYSTEM NAME:

Qualitative Management Program Appeal File

SYSTEM LOCATION:

U.S. Total Army Personnel Command 200, Stovall Street, Alexandria, VA 22332–0400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Enlisted soldiers in grades E–5 through E–9 who have appealed Department of the Army imposed bars to reenlistment.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains name, Social Security Number, pay grade, date of rank, basic active service date, estimated termination of service, primary and secondary military occupational specialties, bar to reenlistment letter/memorandum, appeal to bar to reenlistment and associated documentation, final determination of appeal by Reenlistment Appeals Board, enlisted efficiency reports, selected data elements pertaining to service record of appellant and similar relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 3013; and Executive Order 9397.

PURPOSE(S):

Records in this system are used for the management of personnel, year group, and manpower, in order to retain quality soldiers in the Army.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's name and Social Security Number.

SAFEGUARDS:

Records are protected by physical security devices, guards, and personnel clearances for individuals working with the system.

RETENTION AND DISPOSAL:

Records are retained for duration of individual's current enlistment.

SYSTEMS MANAGER AND ADDRESS(ES):

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–PDT, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, grade, and current address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–PDT, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, grade, and current address.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From Army records and reports; from appellant.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0601–280bTAPC

System name:

Selective/Variable Reenlistment Bonuses (50 FR 22171, May 29, 1985).

Changes:

* * * * *

System location:

Delete entry and replace with "U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400."

Categories of individuals covered by the system:

Delete entry and replace with "Enlisted soldiers in grades El through E9."

* * * * *

Safeguards:

Delete entry and replace with "Records are maintained in areas accessible only to properly cleared, trained, and authorized personnel. Records are in a secured building during non-duty hours."

* * * * *

System manager(s) and address(es):

Delete entry and replace with "Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–EP, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, and current address."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–EP, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, and current address."

* * * * *

A0601–280bTAPC

SYSTEM NAME:

Selective/Variable Reenlistment Bonuses.

SYSTEM LOCATION:

U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Enlisted soldiers in grades El through E9.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, grade, Military Occupational Specialty, documentation substantiating service member's request for accelerated payment of Selective/Variable Reenlistment Bonuses (SRB/VRB) for severe financial hardship or compelling compassionate reasons, advisory recommendation for Army Board for Correction of Military Records consideration, and similar relevant documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. § 3013; and Executive Order 9397.

PURPOSE(S):

To determine if service member is experiencing severe financial hardship so that compelling compassionate reasons exist warranting approval of accelerated payment of SRB/VRB.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to properly cleared, trained, and authorized personnel. Records are in a secured building during non-duty hours.

RETENTION AND DISPOSAL:

Retained for 2 years and then disposed by shredding.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURES:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–EP, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, and current address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–EP, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, and current address.

CONTESTING RECORD PROCEDURES:

The Army's rule for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORDS SOURCE CATEGORIES:

From the individual, personnel records, other Army records and reports.

EXEMPTIONS OLAIMED FOR THE SYSTEM:

None.

A0608TAPC

System name:

Personal Affairs Files (50 FR 22206, May 29, 1985)

Changes:

* * * * *

System location:

Delete last sentence and replace with "Official mailing addresses are published as an appendix to the Army's compilation of record systems notices."

* * * * *

Categories of records in the system:

Delete the comma after the word "areas," and insert a period. Delete "health and welfare, claims under Civilian Health and Medical Program of the Uniformed Services."

* * * * *

Purpose(s):

Delete entry and replace with "To review and answer inquiries concerning personal affairs of service members; e.g., dependent assistance, indebtedness, non-support, paternity claims, marriage in overseas areas, and similar matters that originate from third parties."

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry and replace with "The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system."

* * * * *

System manager(s) and address(es):

Delete entry and replace with "Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the command/installation/activity where they believe inquiry was sent.

Individual should provide the full name, current address and telephone number, and sufficient details to permit locating the record."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in theis record system should address written inquiries to the comman/installation/activity where they believe inquiry was sent.

Individual should provide the full name, current address and telephone number, and sufficient details to permit locating the record."

* * * * *

A0608TAPC

SYSTEM NAME:

Personal Affairs Files.

SYSTEM LOCATION:

Decentralized to major commands, installations, and activities. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army officers, warrant officers, and enlisted personnel on active duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Third party inquiries pertaining to such matters as dependent assistance, indebtedness, non-support, paternity claims, and marriage in overseas areas.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013 and 5 U.S.C. 301.

PURPOSE(S):

To review and answer inquiries concerning personal affairs of service members; e.g., dependent assistance, indebtedness, non-support, paternity claims, marriage in overseas areas, and similar matters that originate from third parties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; cards.

RETRIEVABIITY:

By service member's surname.

SAFEGUARDS:

Records are available only to designated persons having official need therefor in the performance of their duties.

RETENTION AND DISPOSAL:

Retained for 2 years, after which they are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the command/installation/activity where they believe inquiry was sent.

Individual should provide the full name, current address and telephone number, and sufficient details to permit locating the record.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the command/installation/activity where they believe inquiry was sent.

Individual should provide the full name, current address and telephone number, and sufficient details to permit locating the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From third parties, official Army records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0621–1TAPC

System name:

Civilian Schooling for Military Personnel (50 FR 22233, May 29, 85).

Changes:

* * * * *

System location:

Delete entry and replace with "U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400. Segments exist at Army commands/installations organizations/activities, including overseas areas. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices."

* * * * *

Categories of records in the system:

Delete "Forms 1618–R, 2086–R, 2593–R, 3719–R" and replace with "Forms 168–R, Application for Detail as Student Officer in a Civilian Educational Institution of Training with Industry Program; 2593–R, Application for Selection for Scientific and Engineering Graduate School; and 3719–R, Information Questionnaire for Recipients of Top Five Percent Army Fellowship (ROTC and USMA),"; delete "SF 1034" and replace Standard Form 1034, Public Voucher for Purchases and Services Other Than Personal,".

* * * * *

System manager(s) and address(es):

Delete entry and replace with "Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–OPB–D, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, current address and telephone number, sufficient details concerning the civilian school attended to permit locating the record, and signature."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–OPB–D, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, current address and telephone number, sufficient details concerning the civilian school attended to permit locating the record, and signature."

* * * * *

A0621–1TAPC

SYSTEM NAME:

Civilian Schooling for Military Personnel.

SYSTEM LOCATION:

U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400. Segments exist at Army commands/installations, organizations/activities, including overseas areas. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any military service member who applies for or is selected for attendance at civilian school or for training with industry, or participation in a fellowship/scholarship program of training or instruction.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains Department of the Army Forms 1618–R, Application for Detail as Student Officer in a Civilian Educational Institution of Training with Industry Program; 2593–R, Application for Selection for Scientific and Engineering Graduate School; and 3719–R, Information Questionnaire for Recipients of Top Five Percent Army Fellowship (ROTC and USMA), containing name, grade, Social Security Number, address, home phone, duty phone, permanent legal address, branch of service, date of birth, marital status, number of dependents, state of legal residence, military occupational specialties, enlistment status, component, foreign service, civilian educational data, military educational data, transcripts, social fraternities, honorary fraternities, clubs, degree major, class standing and personal resumes, school contracts; student training report; photographs; enlisted qualification record; theses; statements of service and schooling obligation; U.S. Armed Forces Institute test report; civilian institution academic evaluation reports, Standard Form 1034, Public Voucher for Purchases and Services Other Than Personal, similar relevant documents and correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and 10 U.S.C. 4301.

PURPOSE(S):

To document, monitor, manage, and administer the service member's attendance at a civilian training agency or civilian school pursuant to 10 U.S.C. 4301.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel having need therefor in the performance

of assigned duties, within security protected buildings.

RETENTION AND DISPOSAL:

Destroyed by shredding after 2 years.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–OPB–D, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, current address and telephone number, sufficient details concerning the civilian school attended to permit locating the record, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–OPB–D, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, current address and telephone number, sufficient details concerning the civilian school attended to permit locating the record, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From

the individual, Army records and reports, documents from the civilian school or industry training agency.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0635–5TAPC

System name:

Separation Transaction Control/ Records Transfer System (50 FR 22170 May 29, 1985).

Changes:

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System location:

Delete entry and replace with "U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400; U.S. Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249–5301; and U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200."

* * * * *

System manager(s) and address(es):

Delete entry and replace with "Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–PDT, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, military status, and if separated, date of separation."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–PDT, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, military status, and if separated, date of separation."

* * * * *

A0635–5TAPC

SYSTEM NAME:

Separation Transaction Control/ Records Transfer System.

SYSTEM LOCATION:

U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400; U.S. Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249–5301; U.S. Army Reserve Components and Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty enlisted personnel separated from military service (excluding active duty for military training) and all personnel immediately reenlisting after separation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, rank, eligibility for reenlistment, character of separation, program designator, date and location of separation, reenlistment, moral waiver and specialty.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 3013; and Executive Order 9397.

PURPOSE:

To monitor separations of active duty enlisted personnel as a means of controlling strength and record accountability, and reenlistment processing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes/discs.

RETRIEVABILITY:

By name and/or Social Security Number.

SAFEGUARDS:

Records are protected by physical security devices, guards, computer software and hardware safeguard features, and personnel clearances.

RETENTION AND DISPOSAL:

Separation records are destroyed after 1 year; reenlistment records are destroyed after 45 days; tape file is scratched at end of retention period; disc files are purged.

SYSTEMS MANAGERS AND ADDRESSES:

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–PDT, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, military status, and if separated, date of separation.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN:

TAPC–PDT, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, military status, and if separated, date of separation.

CONTESTING RECORDS PROCEDURES:

The Army's rules for accessing records, contesting contents and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From other Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0635–40TAPC

System name:

Temporary Disability Retirement Master List (TDRL) (50 FR 22209, May 29, 1985).

Changes:

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System location:

Delete "U.S. Army Military Personnel Center" and replace with "U.S. Total Army Personnel Command." Add at the end "Official mailing addresses may be obtained from the U.S. Total Army Personnel Command."

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System manager(s) and address(es):

Delete entry and replace with "Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC-PDB, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, current address and telephone number, and signature."

Inquiries are restricted to issues relating to the TDRL only; issues of pay must be made at the U.S. Army Finance and Accounting Center."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–PDB, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, current address and telephone number, and signature.

Inquiries are restricted to issues relating to the TDRL only; issues of pay must be made at the U.S. Army Finance and Accounting Center."

* * * * *

A0635–40TAPC

SYSTEM NAME:

Temporary Disability Retirement Master List (TDRL).

SYSTEM LOCATION:

U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400. Copy of the Master List is retained at U.S. Army Physical Disability Agency, Health Services Command, U.S. Army Enlisted Records and Evaluation Center, US Army Reserve Components Personnel and Administration Center, and U.S. Army Finance and Accounting Center. Official mailing addresses may be obtained from U.S. Total Army Personnel Command.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army personnel who are on temporary disability retirement.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains, Social Security Number, name, address, Department of Army special order number, percentage of disability, doctor code, re-examination date, date placed on TDRL, hospital code, travel code, Army component, pay termination code, requirement for board code, record control number, hospital name and address.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1376 and Executive Order 9397.

PURPOSE(S):

To coordinate with medical treatment facilities for scheduling medical examinations; to issue travel orders for individual to report to medical treatment facility for annual medical examination; to determine individual's status by the end of the fifth year of being on the TDRL, i.e., whether individual is to be permanently retired for disability, or returned to duty.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in medical treatment facilities; magnetic tape, disc.

RETRIEVABILITY:

By Social Security Number and date.

SAFEGUARDS:

Access to all records is restricted to individuals having need therefor in the performance of duties. Automated media are further protected by authorized password for system, controlled access to operation rooms and controlled output distribution.

RETENTION AND DISPOSAL:

A magnetic tape records is maintained on each individual while in a temporary disability retired status. The current and two previous tape files are maintained at any given time.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC-PDB, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, current address and telephone number, and signature.

Inquiries are restricted to issues relating to the TDRL only; issues of pay must be made at the U.S. Army Finance and Accounting Center.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC-PDB, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, current address and telephone number, and signature.

Inquiries are restricted to issues relating to the TDRL only; issues of pay must be made at the U.S. Army Finance and Accounting Center.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and

appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From medical treatment facilities, Army Physical Disability Agency, other Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0635–200TAPC

System name:

Separations: Administrative Board Proceedings (50 FR 22208, May 29, 1985).

Changes:

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System location:

Delete "U.S. Army Military Personnel Center, 200 Stovall Street, Alexandria, VA 22332" and replace with "U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400"; add at the end "Official mailing addresses are published as an appendix to the Army's compilation of record systems notices."

Categories of individuals covered by the system:

Delete "635–200" and replace with "635–200, Enlisted Personnel,".

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete entry and replace with "The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of system notices apply to this record system."

* * * * *

Retention and disposal:

Delete "U.S. Army Military Personnel Center" and replace with "U.S. Total Army Personnel Command"; delete "(DAPC-EPA)" and replace with "(TAPC-PDT)".

System manager(s) and address(es):

Delete entry and replace with "Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the commander at the installation where administrative board convened or to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–PDT, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, details concerning the proposed or actual separation action to include location and date, and signature."

Record access procedures:

Delete entry and replace with "If individual has been separated from the Army, address written inquiries to the National Personnel Records Center, General Services Administration, 9700 Page Boulevard, St Louis, MO 63132–5200; proceedings will be part of the Military Personnel Records Jacket.

If member is on active duty, address written inquiries to the commander at the installation where administrative board convened or to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–PDT, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, details concerning the proposed or actual separation action to include location and date, and signature."

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A0635–200TAPC

SYSTEM NAME:

Separations: Administrative Board Proceedings.

SYSTEM LOCATION:

U.S. Total Army Personnel Command 200 Stovall Street Alexandria, VA 22332–0400. Segments exist at Major Army Commands and subordinate commands, field operating agencies, and activities exercising general courts-martial jurisdiction. Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members on whom allegations of defective enlistment/agreement/fraudulent entry/alcohol or other drug abuse rehabilitation failure/unsatisfactory performance/misconduct/homosexuality under the provisions of Chapters 7, 9, 13, 14, or 15 of Army Regulation 635–200, Enlisted Personnel, result in administrative board proceedings.

CATEGORIES OF RECORDS IN THE SYSTEM:

Notice to service member of allegations on which proposed separation from the Army is based; supporting documentation; DA Form 2627, Records of Proceedings under Article 15, UCMJ; DD Form 493, Extract of Military Records of Previous Convictions; medical evaluations; military occupational specialty evaluation and aptitude scores; member's statements, testimony, witness statements, affidavits,rights waiver record; hearing transcript; board findings and recommendations for separation or retention; final action.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1169.

PURPOSE(S):

Information is used by processing activities and the approval authority to determine if the member meets the requirements for recommended separation action.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are accessed only by designated persons having official need; therefor, within buildings secured during non-duty hours.

RETENTION AND DISPOSAL:

The original of board proceedings becomes a permanent part of the member's Military Personnel Records Jacket. When separation is ordered, a copy is sent to member's commander where it is retained for two years before being destroyed. When separation is not ordered, board proceedings are filed at the headquarters of the separation authority for two years, then destroyed. A copy of board proceedings in cases where the final authority is the U.S. Total Army Personnel Command, pursuant to Army Regulation 635–200, is retained by that headquarters (TAPC–PDT) for one year following decision.

SYSTEM MANAGER AN ADDRESS(ES):

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should

address written inquiries to the commander of the installation where administrative board convened or to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–PDT, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, details concerning the proposed or actual separation action to include location and date, and signature.

RECORD ACCESS PROCEDURES:

If individual has been separated from the Army, address written inquiries to the National Personnel Records Center, General Services Administration, 9700 Page Boulevard, St Louis, MO 63132–5200: prooeedings will be part of the Military Personnel Records Jacket.

If member is on active duty, address written inquiries to the commander of the installation where administrative board convened.

Individual should provide the full name, details concerning the proposed or actual separation action to include location and date, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; individual's commander; Army personnel, medical, and/or investigative records; witnesses; the Administrative Separation Board; federal, state, local, and/or foreign law enforcement agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0640–10bTAPC

System name:

Official Military Personnel File (50 FR 22181, May 29, 1985).

Changes:

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System location:

Delete entry and replace with "U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400, for active duty officers.

U.S. Army Enlisted Evaluation and Records Center, Fort Benjamin Harrison, IN 46249–5301, for active duty enlisted personnel.

U.S. Army Reserve Personne1 Center, 9700 Page Boulevard, St. Louis, MO 63132–5200, for retired and reserve personnel.

National Personnel Records Center, General Services Administration (Military), 9700 Page Boulevard, St. Louis, MO 63132–5100, for discharged and deceased personnel.

An automated index exists at the U.S. Army Reserve Personnel Center showing physical location of the Official Military Personnel of retired and separated service members."

Categories of individuals covered by the system:

Delete "his/her" and replace with "individual's".

Categories of records in the system:

Add "/Certificate of Release or Discharge from Active Duty" after "discharge report"; add "or memoranda" after "/worksheets/elections/letters".

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Routine uses of records maintained in the system, including categories of users and purposes of such uses:

Delete "Veterans Administration:" and replace with "Department of Veterans Affairs:"; delete "Blanket routine uses do not apply to these records" and with "The Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices do not apply to this system."

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Retention and disposal:

Delete "U.S. Army Reserve Components Personnel and Administration Center" and replace with "U.S. Army Reserve Personnel Center".

System manager(s) and address(es):

Delete entry and replace with "Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400."

Notification procedure:

Add at the beginning "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the following:"; delete "System Manager" and replace with "Commander, U.S. Total Army Personnel Command, ATTN: TAPC–MSR, 200 Stovall Street, Alexandria, VA 22332–0400; delete "46249" and replace with "46249–5301"; delete "U.S. Army Reserve Components Personnel and Administration Center, 9700 Page Boulevard, St. Louis, MO 63132" and replace with "U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200; add "or for records of deceased Army Personnel" after "October 31, 1912; delete "63132"and replace with "66132–5200".

Add following subparagraph "Individual should provide the full name, Social Security Number, service identification number, military status, and current address."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the following:

Inquiries for records of commissioned or warrant officers (including members of Reserve Components) serving on active duty should be sent to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC-MSR, 200 Stovall Street, Alexandria, VA 22332–0400.

Inquiries for records of enlisted members (including members of Reserve Components) serving on active duty should be sent to: Commander, U.S. Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249–5301.

Inquiries for records of commissioned officers or warrant officers in a reserve status not on active duty, or Army enlisted reservists not on active duty, or members of the National Guard who performed active duty, or commissioned officers, warrant officers, or enlisted members in a retired status should be sent to: Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St. Louis, MO 63132–5200.

Inquiries for records of commissioned officers and warrant officers who were completely separated from the service after June 30, 1917, or enlisted members who were completely separated after October 31, 1912, or for records of deceased Army personnel should be sent to the Chief, National Personnel Records Center, General Services Administration, 9700 Page Boulevard, St. Louis, MO 63132–5200.

Individual should provide the full name, Social Security Number, service identification number, military status, and current address.

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A0640–10bTAPC

SYSTEM NAME:

Official Military Personnel File.

SYSTEM LOCATION:

U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400 for active duty officers.

U.S. Army Enlisted Evaluation and Records Center, Fort Benjamin Harrison,

IN 46249–5301 for active duty enlisted personnel.

U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St Louis, MO 63132–5200 for retired and reserve personnel.

National Personnel Records Center, General Services Administration (Military), 9700 Page Boulevard, St. Louis, MO 63132–5100, for discharged or deceased personnel.

An automated index exists at the U.S. Army Reserve Personnel Center showing physical location of the Official Military Personnel of retired and separated service members.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Each individual on active duty in the U.S. Army is enlisted, appointed, or commissioned status; and each individual who was an enlisted, appointed, or commissioned member of the U.S. Army and who was completely separated by discharge, death, or other termination of individual's military status.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include enlistment contract; Veterans Administration benefit forms; physical evaluation board proceedings; military occupational specialty data; statement of service; qualification record; group life insurance election; emergency data; application for appointment; qualification/evaluation report; oath of office; medical examination; security questionnaire; application for retired pay; application for correction of military records; field for active duty; transfer or discharge report/Certificate of Release or Discharge from Active Duty; active duty report; voluntary reduction; line of duty and misconduct determinations; discharge or separation reviews; police record checks, consent/declaration of parent/guardian; Army Reserve Officers Training Corps supplemental agreement; award recommendations; academic reports; casualty report; U.S. field medical card; retirement points, deferment; preinduction processing and commissioning data; transcripts of military records; summary sheets review of conscientious objector; election of options; oath of enlistment; enlistment extensions; survivor benefit plans; efficiency reports; records of proceeding, 10 U.S.C., section 815 appellate actions; determinations of moral eligibility; waiver of disqualifications; temporary disability record; change of name; statements for enlistment; acknowledgments of service requirements; retired benefits; application for review by physical evaluation board and disability board; appointments; designations; evaluations; birth certificates; photographs; citizenship statements and status; educational constructive credit transcripts; flight status board reviews; assignment agreements, limitations/waivers/election and travel; efficiency appeals; promotion/reduction/recommendations, approvals/declinations announcements/notifications, reconsiderations/worksheets elections/letters or memoranda of notification to deferred officers and promotion passover notifications; absence without leave and desertion records; FBI reports; Social Security Administration correspondence; miscellaneous correspondence, documents, and military orders relating to military service including information pertaining to dependents, interservice action, in-service details, determinations, reliefs, component; awards, pay entitlement, released, transfers, and other military service data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and Executive Order 9397.

PURPOSE(S):

These records are created and maintained to manage the member's Army service effectively; document historically a member's military service, and safeguard the rights of the member and the Army.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Department of State to issue passport/visa; to document persona-non-grata status, attache assignments, and related administration of personnel assigned and performing duty with the Department of State.

To the Department of Treasury to issue bonds; to collect and record income taxes.

To the Department of Justice to file fingerprints to perform investigative and judicial functions.

To the Department of Agriculture to coordinate matters related to its advanced education program.

To the Department of Labor to accomplish actions required under Federal Employees Compensation Act.

To the Department of Health and Human Services to provide services authorized by medical, health, and related functions authorized by 10 U.S.C. 1074 through 1079.

To the Nuclear Regulatory Commission to accomplish requirements incident to Nuclear Accident/Incident Control Officer functions.

To the American Red Cross to accomplish coordination and service functions including blood donor programs and emergency investigative support and notifications.

To the Civil Aeronautics Board to accomplish flight qualifications, certification and licensing actions.

To the Federal Aviation Agency to determine rating and certification (including medical) of in-service aviators.

To the General Services Administration for records storage and archival services and for printing of directories and related material which includes personal data.

To the U.S. Postal Service to accomplish postal service authorization involving postal officers and mail clerk authorizations.

To the Department of Veterans Affairs to provide information relating to service, benefits, pensions, in-service loans, insurance, and appropriate hospital support.

To the Bureau of Immigration and Naturalization to comply with status relating to alien registration, and annual residence/location.

To the Office of the President of the United States of America to exchange required information relating to White House Fellows, Regular Army promotions, aides, and related support functions staffed by Army members.

To the Federal Maritime Commission to obtain licenses for military members accredited as captain, mate, and harbor master for duty as Transportation Corps warrant officer.

To each of the several states, and U.S. possessions to support state bonus application; to fulfill income tax requirements appropriate to the service member's home of record; to record name changes in state bureaus of vital statistics; and for National Guard affairs.

Civilian educational and training institutions to accomplish student registration, tuition support, tests, and related requirements incident to in-service education programs in compliance with 10 U.S.C. chapters 102 and 103.

To the Social Security Administration to obtain or verify Social Security Account Number; to transmit Federal Insurance Compensation Act deductions made from members' wages.

To the Department of Transportation to coordinate and exchange necessary information pertaining to inter-service relationships between U.S. Coast Guard

(USCG) and U.S. Army when service members perform duty with the USCG.

To the Civil authorities for compliance with 10 U.S.C. 814.

To the U.S. Information Agency to investigate applicants for sensitive positions pursuant to Executive Order 10450.

To the Federal Emergency Management Agency to facilitate participation of Army members in civil defense planning training, and emergency operations pursuant to the military support of civil defense as prescribed by DOD Directive 3025.10, Military Support of Civil Defense, and Army Regulation 500–70, Military Support of Civil Defense.

To the Director of Selective Service System to Report of Non-registration at Time of Separation Processing, of individuals who decline to register with Selective Service System. Such report will contain name of individual, date of birth, Social Security Number, and mailing address at time of separation.

Other elements of the Federal Government pursuant to their respective authority and responsibility.

To the Military Banking Facilities Overseas. Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces, information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual, the U.S. Government will be liable for the losses the facility may incur.

Note: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he/she ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–3 and 290ee–3. These statutes take precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains.

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices do not apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Microfiche stored randomly in electromechanical storage/retrieval devices. Temporary files consist of paper records in file folders; selected data automated for management purposes on tapes, disks, cards, and other computer media.

RETRIEVABILITY:

Alphabetically by surname; automated data retrievable by name, Social Security Number, or ADP parameter; records of reserve, retired, and deceased persons retrieved by Social Security Number terminal digit sequence.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel; automated records are further protected by authorized password system for access terminals, controlled access to operations locations, and controlled output distribution.

RETENTION AND DISPOSAL:

Microfiche and paper records are permanent; retained in active file until termination of service, following which they are retired to the U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St Louis, MO 63132–5200.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURES:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the following:

Inquiries for records of commissioned or warrant officers (including members of Reserve Components) serving on active duty should be sent to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–MSR, 200 Stovall Street, Alexandria VA 22332–0400.

Inquiries for records of enlisted members (including members of Reserve Components) serving on active duty should be sent to: Commander, U.S. Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249–5301. Inquiries for records of commissioned officers or warrant officers in a reserve status not on active duty, or Army enlisted reservists not on active duty, or members of the National Guard who performed active duty, or commissioned officers, warrant officers, or enlisted members in a retired status should be sent to the Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St Louis, MO 63132–5200.

Inquiries for records of commissioned officers and warrant officers who were completely separated from the service after June 30, 1917, or enlisted members who were completely separated after October 31, 1912, or for records of deceased Army personnel should be sent to the Chief, National Personnel Records Center, General Services Administration, 9700 Page Boulevard, St. Louis, MO 63132–5200.

Individual should provide the full name, Social Security Number, service identification number, military status, and current address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the following:

Inquiries for records of commissioned or warrant officers (including members of Reserve Components) serving on active duty should be sent to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC-MSR, 200 Stovall Street, Alexandria, VA 22332–0400.

Inquiries for records of enlisted members (including members of Reserve Components) serving on active duty should be sent to: Commander, U.S. Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249–5301.

Inquiries for records of commissioned officers or warrant officers in a reserve status not on active duty, or Army enlisted reservists not on active duty, or members of the National Guard who performed active duty, or commissioned officers, warrant officers, or enlisted members in a retired status should be sent to the Commander, U.S. Army Reserve Personnel Center, 9700 Page Boulevard, St Louis, MO 63132–5200.

Inquiries for records of commissioned officers and warrant officers who were completely separated from the service after June 30, 1917, or enlisted members who were completely separated after October 31, 1912, or for records of deceased Army personnel should be sent to the Chief, National Personnel Records Center, General Services Administration, 9700 Page Boulevard, St. Louis, MO 63132–5200.

Individual should provide the full name, Social Security Number, service identification number, military status, and current address.

CONTESTING RECORD PROCEDURES:

The Army's rules for access to records and for contesting contents and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Enlistment, appointment, or commission related forms pertaining to individual's military status; academic, training, or qualifications records acquired prior to or during military service; correspondence, forms, records, documents and other relevant papers in Department of the Army, other Federal agencies, or state and local governmental entities; civilian education and training institutions; and members of the public when information is relevant to the Service Member.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0640–10cTAPC

System name:

Career Management Individual Files (50 FR 22188, May 29, 1985).

Changes:

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System location:

Delete entry and replace with "U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400. Decentralized segments exist at the General Officer Management Office, Judge Advocate General's Office, and the Chief of Chaplains office. Official mailing addresses may be obtained from U.S. Total Army Personnel Command."

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Storage:

Delete "computerized database" after "card file".

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Retrievability:

Delete entry and replace with "By individual's surname and/or Social Security Number."

Retention and disposal:

Delete entry and replace with "Records, which are duplicates of the Official Military Personnel File, are destroyed upon separation of the service member from active duty by reason of discharge, transfer, retirement, or death."

System manager(s) and address(es):

Delete entry and replace with "Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the following:

For information concerning general officers: General Officer Management Office, Room 2E749, Pentagon, Washington, DC 20310–0200.

For information concerning chaplains: Chief of Chaplains, Room 1E417, The Pentagon, Washington, DC 20310–0200.

For information concerning officers of The Judge Advocate General Corps: The Judge Advocate General, Room 2E444, The Pentagon, Washington, DC 20310–0200.

For information pertaining to all other soldiers: Commander, U.S. Total Army Personnel, ATTN: TAPC-OP (for officers) or ATTN: TAPC-EP (for enlisted), 200 Stovall Street, Alexandria, VA 22332–0400."

Individual should provide the full name, Social Security Number, service identification number, military occupational specialty, military status, current home address and telephone number, and signature."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the following:

For information concerning general officers: General Officer Management Office, Room 2E749, Pentagon, Washington, DC 20310–0200.

For information concerning chaplains: Chief of Chaplains, Room 1E417, The Pentagon, Washington, DC 20310–0200.

For information concerning officers of The Judge Advocate General Corps: The Judge Advocate General, Room 2E444, The Pentagon, Washington, DC 20310–0200.

For information pertaining to all other soldiers: Commander, U.S. Total Army Personnel, ATTN: TAPC–OP (for officers) or ATTN: TAPC–EP (for enlisted), 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, service identification number, military occupational specialty, military status, current home address and telephone number, and signature.

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A0640–10cTAPC

SYSTEM NAME:

Career Management Individual Files.

SYSTEM LOCATION:

U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400. Decentralized segments exist at the General Officer Management Office, Judge Advocate General's Office, and the Chief of Chaplains Office. Official mailing addresses may be obtained from U.S. Total Army Personnel Command.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty members of the U.S. Army in enlisted grades of E1 through E9, all warrant officers and commissioned officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Orders; record briefs; statements of preference; school credit papers; transcripts; details; career personnel actions; correspondence from individual concerned; original copy of efficiency report; appeal actions; assignment memoranda and requests for orders; memoranda concerning professional development actions; classification data; service awards; service agreements; variable inventive pay data; memoranda of interviews; assignment applications; resumes of qualifications, personal background and experience supporting service member's desires, nominative action by career managers; academic reports; copies of admonition/reprimands imposed under Article 15, UCMJ, letters of appreciation/commendation/recommendation; reports/letters from accredited educational and training organizations; and similar documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 3013; and Executive Order 9397.

PURPOSE(S):

To manage member's Army career, including assignments, counseling, and monitoring professional development.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; card files.

RETRIEVABILITY:

By individual's surname and/or Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized career management activity personnel.

RETENTION AND DISPOSAL:

Records (which are duplicates of the Official Military Personnel File) are destroyed upon separation of the service member from active duty by reason of discharge, transfer, retirement, or death."

SYSTEM MANAGER(S) AND ADDRESS(ES):

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURES:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the following:

For information concerning general officers: General Officer Management Office, Room 2E749, Pentagon, Washington, DC 20310–0200.

For information concerning chaplains: Chief of Chaplains, Room 1E4l7, The Pentagon, Washington, DC 20310–0200.

For information concerning officers of The Judge Advocate General Corps: The Judge Advocate General, Room 2E444, The Pentagon, Washington, DC 20310–0200.

For information pertaining to all other soldiers: Commander, U.S. Total Army Personnel, ATTN: TAPC–OP (for officers) or ATTN: TAPC–EP (for enlisted), 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, service identification number, military occupational specialty, military status, current home address and telephone number, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the following:

For information concerning general officers: General Officer Management Office, room 2E749, Pentagon, Washington, DC 20310–0200.

For information concerning chaplains: Chief of Chaplains, Room 1E417, The Pentagon, Washington, DC 20310–0200.

For information concerning officers of The Judge Advocate General Corps: The Judge Advocate General, Room 2E444, The Pentagon, Washington, DC 20310–0200.

For information pertaining to all other soldiers: Commander, U.S. Total Army Personnel, ATTN: TAPC–OP (for officers) or ATTN: TAPC–EP (for enlisted), 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, service identification number, military occupational specialty, military status, current home address and telephone number, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for contesting contents and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; enlistment, appointment, or commission related forms pertaining to the service member having a current active duty status; academic, training, and qualifications records acquired incident to military service; correspondence, forms, documents and other related papers originating in or collected by the military department for management purposes.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0672–5–1TAPC

System name:

Military Award Case File (50 FR 22201, May 29, 1985).

Changes:

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System location:

Delete "U.S. Army Military Personnel Center" and substitute "U.S. Total Army Personnel Command"; add at the end "Official mailing address may be obtained from U.S. Total Army Personnel Command."

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System manager(s) and address(es):

Delete "U.S. Army Military Personnel Center" and replace with "U.S. Total Army Personnel Command."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–PDA, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, grade and branch of service, name of award/honor, and current address."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–PDA, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, grade and branch of service, name of award/honor, and current address."

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A0672–5–1TAPC

SYSTEM NAME:

Military Award Case File.

SYSTEM LOCATION:

U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400. Segments exist at Army commands which have been delegated authority for approval of an award. Official mailing addresses may be obtained from the U.S. Total Army Personnel Command.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military personnel on active duty, members of reserve components, U.S. civilians serving with US Army units in a combat zone, and deceased former members of the U.S. Army.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files include recommendations for an award; endorsements; award board approvals/disapprovals; citation texts; Department of Army letter orders/general orders; related papers supporting the award; correspondence among the Army; service member, and individuals having knowledge/information relating to the service member concerned or the act or achievement for which an award is recommended.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. chapters 57, 357; 5 U.S.C. 301; and Executive Order 9397.

PURPOSE(S):

To consider individual nominations for awards and/or decorations; record final action; maintain individual award case files.

ROUTINE USES FOR RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to public and private organizations including news media, which grant or publicize awards or honors.

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folder.

RETRIEVABILITY:

By nominee's name.

SAFEGUARDS:

Records are accessible only to designated individuals having official need therefor in the performance of assigned duties.

RETENTION AND DISPOSAL:

Approval/disapproval authorities: Approved awards relating to wartime and/or combat activities are held permanently. Approved peacetime awards and all disapproved awards are held for 25 years.

SYSTEM MANAGER AND ADDRESS(ES):

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–PDA, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, grade and branch of service, name of award/honor, and current address.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–PDA, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, grade and branch of service, name of award/honor, and current address.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From Recommendation for Awards (DA Form 638) with supporting records, forms, statements, letters, and similar documents originated by persons other than the awardee and other individuals having information useful in making an award determination.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0680–31aTAPC

System name:

Officer Personnel Management Information System (OPMIS) (50 FR 22185, May 29, 1985).

Changes:

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System location:

Delete entry and replace with "U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400."

* * * * *

Categories of records in the system:

Seventh subparagraph, delete "Army Requirements Board (AERB)" and replace with "Army Education Requirements System (AERS)"; delete the eighth subparagraph and replace with "Army Education Requirements System (AERS) File contains selected information from the OMF for officer and warrant officer personnel who are serving or are projected to serve in an AERS approved position requiring graduate level education."

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete "Information may be disclosed to:"; add at the end of the last subparagraph "also apply to this system."

* * * * *

System manager(s) and address(es):

Delete entry and replace with "Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, current address, and identify the specific category of record involved, whether awaiting active duty, active retired, or separated and give return address.

Blanket requests for information from this consolidated system will not be accepted. If awaiting active duty, specify the date thereof; if separated, individual must state date of separation."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, current address, and identify the specific category of record involved, whether awaiting active duty, active retired, or separated and give return address.

Blanket requests for information from this consolidated system will not be accepted. If awaiting active duty, specify the date thereof; if separated, individual must state date of separation."

* * * * *

A0680–31aTAPC

SYSTEM NAME:

Officer Personnel Management Information System (OPMIS).

SYSTEM LOCATION:

U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals projected for entrance into the Army officer corps; Army officer and warrant officer personnel projected to enter on active duty, separated, or in-retired status; individuals, civilian and military, who serve as senior rating officials on the officer evaluation reports (OERs) of Army officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Officer Master File (OMF) contains name, Social Security Number, grade and date of rank, appointment and service agreement, service data and date, promotion, assignment, qualifications, specialties, efficiency, education and training, occupation, language, career pattern, awards and badges, physical location, separation,

retirement, date and place of birth, race, religion, ethnic group, dependents, sex, citizenship, marital status, and mailing address.

Management Accession Information System (AMIS) contains selected information for the OMF, date of entry on active duty, personal demographic data, and assignment information.

Assignments and Training Selection for Reserve Officer Training Corps (ROTC) graduates contains selected information from the OMF, the cadet's preference statement for specialty (branch), duty and initial training; Reserve Forces duty or delay selection, Regular Army selection and branch selection.

Officer Evaluation Reporting System contains selected information from the OMF; selection board status; OER suspense indicator for action being taken to obtain missing or erroneous OER; selected information for each of the last ten OERs; and the name, Social Security Number, and rating history of each individual, military and civilian, who has served as the senior rating official for an active duty Army officer.

Officer Distribution and Assignment System (ODAS) contains selected information from the OMF, projected assignment information for officers and warrant officers who are being reassigned.

Reserve Officer Training Corps Instructor File contains selected information from the OMF and the following information pertaining to ROTC instructors; ROTC detachment, duty station, date assigned to ROTC detachment, date projected to be reassigned.

Officer Civil Schools Management Information System (CSMIS) contains the following selected information from the OMF and the following information concerning officer and warrant officer personnel participating or who have participated in the Army sponsored degree completion program; school attended, start and completion dates, degree level and discipline, and Army Education Requirements System (AERS) positions.

Army Education Requirements System File contains selected information from the OMF for officer and warrant officer personnel who are serving or are projected to serve in an AERS approved position requiring graduate level education.

U.S. Army Military Academy (USMA) Potential Instructor File contains selected information from the OMF and the following information pertaining to previous, current, and potential instructors for the USMA teaching staff; academic department and projected availability for USMA instructor duty.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 3013; and Executive Order 9397.

PURPOSE(S):

Information is used for personnel management strength accounting, manpower management, accessioning and determining basic entry specialty (branch) and initial duty assignments; tracking Officer Evaluation Reports, the rating history of senior rating official's rating history on individual OERs producing reports on active duty officers who have served as senior rating officials; managing instructor population at ROTC detachments and USMA; tracking information relating to the Army Degree Completion Civil School Program; transmitting necessary assignment instructions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

To the Social Security Administration to verify Social Security Numbers.

To the Smithsonian Institution (The National Museum of American History): Copy of the U.S. Army Active Duty Register, for historical research purposes (not authorized for public display).

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer magnetic tapes and discs.

RETRIEVABILITY:

By Social Security Number, name, or other individual identifying characteristics.

SAFEGUARDS:

Physical security devices, guards, computer hardware and software features, and personnel clearances. Automated media are protected by authorized password for system, controlled access to operator rooms and controlled output distribution.

RETENTION AND DISPOSAL:

Records are retained on the active OMF files for 4 months after separation. Historical OMF records are retained dating back to FY 1970. Accessions in AMIS are retained on active file until effective date of accession and are then placed on a history file for a period of 6 months. Records in the ROTC Graduate Assignment and Training Selection File are retained for approximately 400 days after the file is created (approximately December each year). Historic files for the OER system are kept for the life of the system. All other records are retained for active duty only until the individual is released from active duty and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, current address, and identify the specific category of record involved, whether awaiting active duty, active retired, or separated and give return address.

Blanket requests for information from this consolidated system will not be accepted. If awaiting active duty, specify the date thereof; if separated, individual must state date of separation.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, current address, and identify the specific category of record involved, whether awaiting active duty, active retired, or separated and give return address.

Blanket requests for information from this consolidated system will not be accepted. If awaiting active duty, specify the date thereof; if separated, individual must state date of separation.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports, other Federal agencies and departments.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0680–31bTAPC

System name:

Enlisted Personnel Management Information System (EPMIS) (50 FR 22166, May 29, 1985).

Changes:

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System location:

Delete "U.S. Army Military Personnel Center" and replace with "U.S. Total Army Personnel Command".

* * * * *

System manager(s) and address(es):

Delete entry and replace with "Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–EP, 200 Stovall Street, Alexandria, VA 22332–0400.

Information regarding the Enlistment Evaluation system should be obtained from the Commander, U.S. Army Enlisted Records Evaluation Center, Fort Benjamin Harrison, IN 46249–5301.

Individual should provide the full name, Social Security Number, current address, and identify the specific category of record involved."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–EP, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, current address, and identify the specific category of record involved, whether awaiting active duty, active retired or separated.

Blanket requests for information from this consolidated system will not be accepted. If awaiting active duty, specify the date thereof; if separated, individual must state date of separation.

Visits are limited to U.S. Total Army Personnel Command. Information from the Enlisted Evaluation System should be obtained from either the servicing military personnel office, the headquarters of the individual's organizational station, or the U.S. Army Enlisted Records Evaluation Center.

For personal visits, the individual must be able to provide acceptable identification and give verbal information to verify the record."

* * * * *

A0680–31bTAPC

SYSTEM NAME:

Enlisted Personnel Management Information System (EPMIS).

SYSTEM LOCATION:

U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400. The Enlisted Evaluation System is maintained at U.S. Army Enlisted Records Evaluation Center, Fort Benjamin Harrison, IN 46249–5301.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army enlisted personnel on active duty; non-prior service and prior service personnel who either have, or indicate a desire to enlist in the U.S. Army, U.S. Army National Guard, or U.S. Army Reserves; initial active duty training personnel undergoing basic training or advanced individual training; former military personnel who are applicants for enlistment in grades E1 to E9.

CATEGORIES OF RECORDS IN THE SYSTEM:

Enlisted Master File (EMF) contains name, Social Security Number, sex, race, citizenship, religion, marital status, dependents, date and place of birth, residence, assignments, physical profile, ethnic group, grade/date of rank, enlistment and service promotion qualifications, military occupational skill code, education and training, aptitude, separation, retirement, and mailing address.

Recruit Quota System (REQUEST) contains selected information from EMF and soldier's educational level achieved and school subjects, driver's license, color perception, aptitude battery scores, audio perception score, defense language aptitude battery score, motor vehicle battery test score; type of enlistment and date, term, and option; initial processing and training assignments, types, locations, and dates; unit of assignment identification, system identification of location that created accession record, recruiter identification and recruiting area credit code.

Enlisted Training Base contains selected information from EMF and the soldier's enlistment and service, assignment, enlistment commitments by MOS and type, college subjects, civilian acquired skills, advanced or basic individual training start and graduation date, location and MOS, follow-on MOS location training recommended versus preferred, aptitude area scores and categories.

Enlisted Year Management File (RETAIN) contains selected information from the EMF and control number, reclassification/enlistment action, type of enlistment, basic active service data, estimated termination of service, reenlistment date, civilian education, career management field, primary military occupational specialty code and date of award, source of new Primary Occupational Specialty Code, personnel charged to school code, status of application, assignment code, date of last status change, current location, year group, security investigation status and term reenlisted.

Enlisted Linguist Data Base contains selected information from the EMF and foreign language code, listening and reading proficiency, ratings and scores, dates of evaluation test or interview, how each language capability was acquired, with the principal type, highest level and most recent date of proficiency in each foreign language.

Enlisted Evaluation System contains selected information from the EMF and the soldiers' primary and career progression military occupational specialties, skill qualification test data, enlisted evaluation scores used to create the Enlisted Evaluation Report Weighted Average and other enlisted evaluation report data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 and Executive Order 9397.

PURPOSE(S):

To accomplish personnel management, strength accounting, and manpower management actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disclosed to the Social Security Administration to verify Social Security Numbers.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computer magnetic tapes and discs; computer printouts.

RETRIEVABILITY:

By Social Security Number, name, or other individually identifying characteristics.

SAFEGUARDS:

Information is protected by physical security devices, guards, computer hardware and software safeguard features, personnel clearances and passwords.

RETENTION AND DISPOSAL:

Records are retained 5 years after separation except enlisted linguist data base records which are retained 6 months after separation.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–EP, 200 Stovall Street, Alexandria, VA 22332–0400.

Information regarding the Enlistment Evaluation system should be obtained from the Commander, U.S. Army Enlisted Records Evaluation Center, Fort Benjamin Harrison, IN 46249–5301.

Individual should provide the full name, Social Security Number, current address, and identify the specific category of record involved.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Total Army Personnel Command, ATTN: TAPC–EP, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name, Social Security Number, current address, and identify the specific category of record involved, whether awaiting active duty, active retired, or separated.

Blanket requests for information from this consolidated system will not be accepted. If awaiting active duty, specify the date therof; if separated, individual must state date of separation.

Visits are limited to U.S. Total Army Personnel Command. Information from the Enlisted Evaluation System shoud be obtained from either the servicing military personnel office, the headquarters of the individual's organizational station, or the U.S. Army Enlisted Records Evaluation Center.

For personal visits, the individual must be able to provide acceptable identification and give verbal information to verify the record.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing reciords, contesting contents and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, from documents and computer readable output, other Department of the Army staff agencies and commands, other federal agencies and departments.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0690–200TAPC

System name:

Department of the Army Civilian Personnel Systems (50 FR 22213, May 29, 1985).

Changes:

* * * * *

System locastion:

Delete "Primary system is the Civilian Personnel Information System/Civilian Management File, Civilian Personnel Directorate,"; delete "Center" and replace with "Command"; add at the end "Official mailing addresses may be obtained from U.S. Total Army Personnel Command."

* * * * *

Categories of records in the system:

Add "mobilization" after "foreign language code".

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Delete "Information may be disclosed to:"; delete "Veterans Administration" and replace with "Department of Veterans Affairs"; add the following subparagraph at the end "The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices also apply to this system."

* * * * *

System manager(s) and address(es):

Delete entry and replace with "Commander, U.S. Totak Army Personnel Command, ATTN: TAPC–CP, 200 Stovall Street, Alexandria, 22332–0400."

Notification procedure:

Delete entry and replace with "Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the servicing civilian personnel office. Official mailing addresses may be obtained from Commander, U.S. Total Army Personnel Command, 00 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name and Social Security Number."

Record access procedures:

Delete entry and replace with "Individuals seeking access to records about themselves contained in this record system should address written inquiries to the servicing civilian personnel office. Official mailing addresses may be obtained from Commander, U.S. Total Army Personnel Command, ATTN: TAPC–CP, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name and Social Security Number."

A0690–200TAPC

SYSTEM NAME:

Department of the Army Civilian Personnel Systems.

SYSTEM LOCATION:

U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, 22332–0341. Derivative Systems are maintained at commands, installations and activities dependent on the type of system maintained. Command-wide systems are the Civilian Personnel Accounting System at U.S. Army Military District of Washington, the U.S. Army Corps of Engineers Management Information System, and the Personnel Management Information System of U.S. Army Materiel Command. Official mailing addresses may be obtained from U.S. Total Army Personnel Command.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All U.S. citizen appropriated fund employees and, in some instances, nonappropriated fund employees, dependents, and foreign nationals; military personnel are included in the incentive awards and training programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Civilian personnel systems vary in informational capacity according to respective requirements and contain several or all of the following records: Academic discipline; career program; citizenship; date of birth; educational level; employee tenure; Federal Employees Group fife Insurance; functional classification; name of employee; nature of action; occupational series; pay basis, pay plan, rate determinant; physical handicap; position

occupied and tenure; military status; salary; service computation date; sex; Social Security Number; special program identifier; step or rate; submitting office number; training data, including costs, non-duty hours, on-duty hours, principal purpose, special interest program, date of completion; type of appointment; unit identification code; veterans preference; work schedule; organizational and position data, retention data; adverse action data; Fair Labor Standards Act coverage; cost of living allowances; transportation entitlement; cost codes; leave category; salary history; wage area; position sensitivity; security investigation data; security clearance and access data; performance/suggestion/cash awards; reemployment rights; training agreement; reserve status; vessel operations qualifications; Government driver's license; food handler's permit; intern recruitment and training data; career management data including performance/potential ratings; employee evaluation; qualifications; achievements; dependent data; overseas sponsor information; state address; home address; leave data; foreign language code, mobilization. Records are maintained for military personnel participating in department-wide incentive awards and training programs sponsored by operating civilian personnel offices.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 10 U.S.C. 3013; Executive Order 9397.

PURPOSE(S):

Information in this system is used by civilian personnel offices to screen qualifications of employees; determine status, eligibility, and employee's rights, and benefits under pertinent laws and regulations governing Federal employment; compute length of service; compile reports and statistical analyses of civilian work force strength trends, accounting, and composition; and to provide personnel services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Department of Labor, Department of Veterans Affairs, Social Security Administration, or a national, State, county, municipal, or other publicly recognized charitable or income security administration agency (e.g., state unemployment compensation agencies), where necessary to adjudicate a claim under Office of Personnel Management's retirement, insurance, or health benefits program or to conduct an analytical study or audit of benefits being paid under such programs.

Office of Federal Employees Group Life Insurance, information necessary to verify election, declination, or waiver or regular and/or optional life insurance coverage or eligibility for payment of a claim for life insurance.

Health insurance carriers contracting with Office of Personnel Management to provide a health benefits plan under the Federal Employees Health Benefits Program, information necessary to identify enrollment in a plan, to verify eligibility for payment of a claim for health benefits, or to carry out the coordination or audit of benefit provisions of such contracts.

Federal, State, or local agencies for determination of an individual's entitlement to benefits in connection with Federal Housing Administration programs.

Officials of labor organizations recognized under 5 U.S.C. Chapter 71 when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions.

Public and private organizations, including news media, which grant or publicize awards and/or honors, information on individuals considered/selected for incentive awards and other honors.

The "Blanket Routine Uses" set forth at the beginning of the Army's compilation of record system notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes, drum, disc, punched cards; microfilm/fiche; or hard copy.

RETRIEVABILITY:

By Social Security Number and/or name.

SAFEGUARDS:

Computer facilities and terminals are located in restricted areas accessible only to authorized personnel who are properly screened, cleared, and trained. Manual records, microfilm/fiche, and computer printouts are stored in locked rooms or cabinets on military installations or in buildings secured by guards.

RETENTION AND DISPOSAL:

These records are retained for varying periods of time. Generally, they are maintained for a minimum of 1 year or until the employee transfers or separates. They may also be retained indefinitely as a basis for longitudinal work history statistical studies.

SYSTEM MANAGER(S) AND ADDRESS(ES):

Commander, U.S. Total Army Personnel Command, ATTN: TAPC–CP, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the servicing civilian personnel office. Official mailing addresses may be obtained from Commander, U.S. Total Army Personnel Command, ATTN: TAPC–CP, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the servicing civilian personnel office. Official mailing addresses may be obtained from Commander, U.S. Total Army Personnel Command, ATTN: TAPC–CP, 200 Stovall Street, Alexandria, VA 22332–0400.

Individual should provide the full name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, contesting contents, and appealing initial determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; from individual's official personnel file.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 91–24120 Filed 10–8–91; 8:45 am]
BILLING CODE 3810–01–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as

required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before November 8, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washignton, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue, SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any angency's ability to perform its statutory obligations.

The Acting Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Mary P. Liggett at the address specified above.

Dated: October 3, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: National Education Longitudinal Study of 1988 (NELS:88) Second Follow-up Main Survey.
Frequency: Biennially.
Affected Public: Individuals or households; State or local governments.
Reporting Burden: Responses—62,864; *Burden Hours*—90,515.
Recordkeeping Burden: Recordkeepers—0; *Burden Hours*—0.
Abstract: The purpose of this study is to collect data from twelfth graders and their parents and school administrators to inform policy makers of the educational, vocational and personal development of these students.

Office of Postsecondary Education

Type of Review: Revision.
Title: Reports of Financial Status and Performance for the Veterans Education Outreach Program.
Frequency: Annually.
Affected Public: Non-profit institutions.
Reporting Burden: Responses—1,000; *Burden Hours*—2,000.
Recordkeeping Burden: Recordkeepers—0; *Burden Hours*—0.
Abstract: Institutions of higher education that have participated in the Veterans Education Outreach Program are to submit these reports to the Department. The Department uses the information to assess the accomplishments of project goals and objectives, and to aid in effective program management.

Office of Postsecondary Education

Type of Review: Existing collection in use without an OMB control number.
Title: Final Performance Report for title III of the Higher Education Act of 1965, as amended.
Frequency: At the end of the grant period.
Affected Public: Non-profit institutions.
Reporting Burden: Responses—103; *Burden Hours*—2,472.
Recordkeeping Burden: Recordkeepers—0; *Burden Hours*—0.
Abstract: This information is required of grantees under the Strengthening Institutions Program, part A, title III of the Higher Education Act of 1965, as amended. The Department will use this information to evaluate the effectiveness of activities funded under the program.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.
Title: Payments From Allotments From Vocational Rehabilitation Services—§ 361.86.
Frequency: On occasion.
Affected Public: States or local governments.
Reporting Burden: Responses—9; *Burden Hours*—90.
Recordkeeping Burden: Recordkeepers—0; *Burden Hours*—0.
Abstract: A State must request in writing a waiver or modification, including supporting justification, if it determines that an exceptional or uncontrollable circumstance will prevent it from meeting its required expenditures from non-Federal sources (the Maintenance of Effort level). The Secretary will use the information to grant waivers from or modifications to the State's Maintenance of Effort level requirement.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: Extension.
Title: Application for the Bilingual Education State Educational Agency Program.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden: Responses—57; *Burden Hours*—2,280.
Recordkeeping Burden: Recordkeepers—0; *Burden Hours*—0.
Abstract: This form will be used by State educational agencies to apply for funding under the Bilingual Education State Educational Agency Program. The Department will use this information to make grant awards.

[FR Doc. 91–24230 Filed 10–8–91; 8:45 am]
BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Financial Assistance Notice (Unsolicited Proposal)

AGENCY: U.S. Department of Energy Field Office, Albuquerque.

ACTION: Notice of Program Interest (NOPI) for Support of a Community College Environmental Education Program.

SUMMARY: The Department of Energy (DOE), Technology Development Office for Environmental Restoration and Waste Management, pursuant to the DOE Financial Assistance Rules, 10 CFR part 600, and Public Law 101–510 (11/5/90), announces the establishment of a Community College Environmental Education Program. Public Law 101–510 established the DOE Energy Science Education Enhancement Program to encourage the development and implementation of science, mathematics, and engineering education programs at the DOE and its research and development facilities. This program is part of a national effort to improve science, mathematics, and engineering

education and provide more efficient coordination linkage between the science, mathematics, and engineering education programs.

The Secretary of Energy established the DOE policy in the SEN–23–90 notice which supports special efforts directed at encouraging and supporting women, minorities, disabled, and disadvantaged students in math and science curriculas at the precollege and university levels. The Director of the Office of Environmental Restoration and Waste Management has, in support of SEN–23–90, established a program to increase the present DOE work force to resolve long-term environmental protection issues and environmental activities related to site restoration and cleanup. This program will increase the number of employees with responsibilities in the areas of environmental and waste management.

SUPPLEMENTARY INFORMATION: The Office of the Technology Development is planning to support a Community College Environmental Education Program which will increase the future work force of professionals and technologies who can meet DOE's environmental challenges of site restoration and cleanup. This Community College Environmental Education Program will provide a focus of environmental restoration and waste management on community college curricula which will help increase the participation of women, minorities, and disadvantaged groups in the required work force.

The DOE anticipates immediate support of this program which will help address the local DOE community work force needs. Program activities should include: (1) Program Marketing Plan which addresses the environmental work force needs of the local DOE Field Office including the number of DOE-contractor staff that need retraining and how the community college intends to respond to this retraining; (2) recruitment plan for women and minorities; (3) Faculty and Curricula Development Plan for environmental education; (4) environmental education training tools and materials; and (5) plans for linking the community colleges with DOE facilities, private industry, education institutions, and other appropriate partners.

The DOE anticipates multiple awards with funding for the first program year to total $2–3 million. The potential for multi-year funding is anticipated, depending on the quality and technical nature of the activity. The Office of Technology Development intends to use Financial Assistance Rules (10 CFR part 600) in providing the opportunity for community colleges to focus their programs toward DOE needs. Programs will be administered out of DOE Field Offices in fiscal year (FY) 1992.

FOR FURTHER INFORMATION, CONTACT: No Proposals Are Desired in response to this Notice, and if they are sent, they will be returned to sender. The DOE Field Offices will announce the program details during FY 1992. The Program Coordination Office for this program is the DOE Field Office, Albuquerque. The contact is:

Mr. Darrell H. Bandy, U.S. Department of Energy Field Office, Albuquerque, Technology Transfer and Commercialization Staff, P.O. Box 5400, Albuquerque, NM 87185–5400, Telephone: (505) 845–5150.

Issued in Albuquerque, New Mexico, on September 25, 1991.

Larry E. Hymes,

Active Assistant Manager for Management and Administration, DOE Field Office, Albuquerque.

[FR Doc. 91–24340 Filed 10–8–91; 8:45 am]

BILLING CODE 6450–01–M

Cooperative Agreement; Correction

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of correction of cooperative agreement intent to award.

SUMMARY: This notice corrects the total cost of the project previously printed in the **Federal Register** September 3, 1991 (56 FR 43587) for an intent to award a cooperative agreement to National Food Processors Association (NFPA). The last three sentences of the supplementary information should be corrected to read as set forth below:

The total cost of the project (all shares) is estimated at $361,140. Total project costs will be shared (68%/32%) $244,140 for DOE and $117,000 for NFPA. The estimated DOE funding for the initial award period will be $102,000.

There are no changes in the project period or objectives to be accomplished under this award.

FOR FURTHER INFORMATION CONTACT: Mary V. Willcox, U.S. Department of Energy, DOE Field Office, Idaho, 785 DOE Place, Idaho Falls, Idaho 83402–1221, 208/526–2173.

Issued: October 2, 1991.

Delores J. Ferri,

Director, Contracts Management Division.

[FR Doc. 91–24339 Filed 10–8–91; 8:45 am]

BILLING CODE 6450–01–M

Alaska Power Administration

[Rate Order No. APA–11]

Snettisham Project—Notice of Order Confirming and Approving an Adjustment of Power Rates on an Interim Basis

AGENCY: Alaska Power Administration, DOE.

ACTION: Notice of adjustment of power Rates—Snettisham Project, Rate Schedules SN–F–4, SN–NF–5, SN–NF–6, and SN–NF–7.

SUMMARY: Notice is hereby given that the Assistant Secretary, Conservation and Renewable Energy, approved on September 25, 1991, Rate Order No. APA–11 which adjusts the present power rates for the Snettisham Project. This is an interim rate action effective October 1, 1991, for a period of 12 months. This rate is subject to final confirmation and approval by the Federal Energy Regulatory Commission (FERC) for a period of up to five years.

FOR FURTHER INFORMATION CONTACT: Mr. Gordon J. Hallum Chief, Power Division, Alaska Power Administration, 2770 Sherwood Lane, suite 2B, Juneau, AK, 99801, (907) 586–7405.

SUPPLEMENTARY INFORMATION: On May 31, 1991, the Alaska Power Administration (APA) published a **Federal Register** notice of its intention to adjust current power rates for the Snettisham Project for a period of up to five years.

Following review of APA's proposal within the Department of Energy, on September 25, 1991, I approved on an interim basis Rate Order No. APA–11 which adjusts the present Snettisham Rates for period of up to 12 months beginning October 1, 1991, subject to final confirmation and approval by FERC.

Issued at Washington, DC, September 25, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Order Confirming and Approving Power Rates on an Interim Basis

This is an interim rate action subject to review and approval of the Federal Energy Regulatory Commission. It is made pursuant to the authorities delegated in DOE Delegation Order No. 0204–108, Amendment No. 2 to that Order, dated August 23, 1991 (56 FR 41,835).

Background

Section 204 of the 1962 Flood Control Act, (76 Stat. 1194) authorizes the Crater-Long Lakes Division of the Snettisham project and provides authority and general criteria for marketing Snettisham project power. Section 201 of the 1976 Water Resources Development Act, Public Law 94–587, provides additional criteria. The DOE Organization Act (91 Stat. 565) assigns responsibilities for Snettisham to the Secretary of Energy acting by and through the APA Administrator.

The Snettisham Project was constructed in two phases. The Long Lake phase went into commercial service in 1975. The Crater Lake phase went into commercial service in 1991. Section 201 of the 1976 Water Resources Development Act, Public Law 94–587, set a repayment period of 60 years for the Long Lake portion of the project and fixed a schedule for its repayment. The Crater Lake investment carries a 50 year repayment period.

The Snettisham Project is a single purpose project comprised of two separate lake taps, power tunnels and penstocks; a single underground powerplant housing three units with a combined capacity of 78,210 kw; 41 miles of 138 kv overhead transmission line and 3 miles of submarine cable; and a single substation serving the Juneau area. All project costs are allocated to power. Nearly all the project output is under contract on a take or pay basis to the single utility serving the Juneau area. A small amount of energy is sold to the State of Alaska for operation of a fish hatchery at Snettisham.

Rate Schedule SN–F3 now in effect for the Snettisham Project was confirmed and approved by order of the Federal Energy Regulatory Commission, Docket No. EF–87–1021–000 issued March 5, 1987 for a period ending September 30, 1989. The rate was extended by the Federal Energy Regulatory Commission, Docket No. EF–89–1021–000 issued May 23, 1990 for a period ending September 30, 1991. Non-firm rates for the short-term sale of surplus energy were originally put in place by the Administrator under the provisions of Delegation Order No. 0204–108 in July, 1987 and renewed annually since that time.

Discussion

Need for Interim Rate Action

Studies prepared by the Alaska Power Administration, as required by DOE Order No. RA 6120.2, demonstrate that the present firm rate does not provide sufficient revenue to meet requirements during the rate period or to meet project repayment criteria by the end of the repayment period. The proposed rates meet project repayment criteria during both the rate period and repayment period. The Administrator of Alaska Power Administration has certified that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Environmental Impact

The proposed firm rate results in an 11.5% increase over the existing rate which has been in place since 1986. Since that same time the rate of inflation as measured by the Consumer Price Index has 19.3%. Alaska Power Administration has concluded with Departmental concurrence that this rate action will have no significant environmental impact within the meaning of the Environmental Policy Act of 1969. The proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding this rate action, including studies and other supporting material, is available for public review in the offices of the Alaska Power Administration, 2770 Sherwood Lane, Juneau, Alaska.

Public Notice and Comment

Opportunity for public review and comment on the rate action was announced by notice in the **Federal Register** on May 31, 1991. The notice provided for a comment period of 90 days following publication of the notice. Public information and comment forums were held in Juneau, Alaska on June 27, 1991 and July 11, 1991. These comments are part of the record of decision and were considered in the final proposal.

Submission to FERC

The rates herein confirmed, approved, and placed in effect on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective October 1, 1991, attached Wholesale Power Rate Schedules SN–F–4, SN–NF–5, SN–NF–6 and SN–NF–7. These rate schedules shall remain in effect on an interim basis for a period of 12 months unless such period is extended or until the Federal Energy Regulatory Commission confirms and approves them or substitute rate schedules on a final basis.

Issued at Washington, DC, this 25th day of September 1991.

J. Michael Davis,

Assistant Secretary; Conservation and Renewable Energy.

Schedule of Rates for Wholesale Firm Power Service

Effective: October 1, 1991 for a maximum of five years.

Available: In the area served by the Snettisham Project, Alaska.

Applicable: To wholesale power customers for general power service.

Character and Conditions of Service: Alternating current, sixty cycles, three-phase, delivered and metered at the low-voltage side of substation.

Monthly Rate: Capacity charge: None. Energy charge: Firm energy at 32.1 mills per kilowatt-hour.

Minimal Annual Capacity Charge: None.

Billing Demand: Not applicable.

Adjustments: For transformer losses: If delivery is made at the high-voltage side of the customer's substation but metered at the low-voltage side, the meter readings will be increased 2 percent to compensate for transformer losses.

Schedule of Rates for Interruptible Power Service

Effective: October 1, 1991 for a maximum of five years.

Available: In the area served by the Snettisham Project, Alaska.

Applicable: To wholesale power customers for resale to their large commercial and government dual-fuel customers. Availability of energy will be determined by Alaska Power Administration.

Character and Conditions of Service: Alternating current, sixty cycles, three-phase, delivered and metered at the low-voltage side of substation.

Monthly Rate: Capacity charge: None. Energy charge: Variable rate pegged to price of heating oil purchased by the State of Alaska or City and Borough of Juneau, whichever is lower. Refer to Table 1 listing oil prices and comparable wholesale rates.

Minimal Annual Capacity Charge: None.

Billing Demand: Not applicable.

Adjustments: For transformer losses: If delivery is made at the high-voltage side of the customer's substation but metered at the low-voltage side, the meter readings will be increased 2

percent to compensate for transformer losses.

TABLE 1

$$\text{Wholesale rate} = 1.00 + \left(\frac{\frac{.9 \times \text{OIL}}{28.3}}{2} - 1.91 \right)$$

Fuel oil ($/gal)	Wholesale rate (cents/kwh)	Wholesale rate (mills/kwh)
0.50	0.84	8.4
0.52	0.87	8.7
0.54	0.90	9.0
0.56	0.94	9.4
0.58	0.97	9.7
0.60	1.00	10.0
0.62	1.03	10.3
0.64	1.06	10.6
0.66	1.09	10.9
0.68	1.13	11.3
0.70	1.16	11.6
0.72	1.19	11.9
0.74	1.22	12.2
0.76	1.25	12.5
0.78	1.29	12.9
0.80	1.32	13.2
0.82	1.35	13.5
0.84	1.38	13.8
0.86	1.41	14.1
0.88	1.44	14.4
0.90	1.48	14.8
0.92	1.51	15.1
0.94	1.54	15.4
0.96	1.57	15.7

Schedule of Rates for Interruptible Power Service

Effective: October 1, 1991 for a maximum of five years.

Available: In the area served by the Snettisham Project, Alaska.

Applicable: To wholesale power customers for resale to their residential dual-fuel customers. Availability of energy will be determined by Alaska Power Administration.

Character and Conditions of Service: Alternating current, sixty cycles, three-phase, delivered and metered at the low-voltage side of substation.

Monthly Rate: Capacity charge: None. Energy charge: Variable rate pegged to price of heating oil purchased by the State of Alaska. Refer to Table 1 listing oil prices and comparable wholesale rates.

Minimum Annual Capacity Charge: None.

Billing Demand: Not applicable.

Adjustments: For transformer losses: If delivery is made at the high-voltage side of the customer's substation but metered at the low-voltage side, the meter readings will be increased 2 percent to compensate for transformer losses.

TABLE 1

$$\text{Wholesale rate} = 1.00 + \left(\frac{\frac{.9 \times \text{OIL}}{28.3}}{2} - 1.91 \right)$$

Fuel oil ($/gal)	Wholesale rate (cents/Kwh)	Wholesale rate (mills/kwh)
0.50	0.84	8.4
0.52	0.87	8.7
0.54	0.90	9.0
0.56	0.94	9.4
0.58	0.97	9.7
0.60	1.00	10.0
0.62	1.03	10.3
0.64	1.06	10.6
0.66	1.09	10.9
0.68	1.13	11.3
0.70	1.16	11.6
0.72	1.19	11.9
0.74	1.22	12.2
0.76	1.25	12.5
0.78	1.29	12.9
0.80	1.32	13.2
0.82	1.35	13.5
0.84	1.38	13.8
0.86	1.41	14.1
0.88	1.44	14.4
0.90	1.48	14.8
0.92	1.51	15.1
0.94	1.54	15.4
0.96	1.57	15.7

Schedule of Rates for Non-Firm Surplus Power Service

Effective: October 1, 1991 for a maximum of five years.

Available: In the area served by the Snettisham Project, Alaska.

Applicable: To wholesale power customers who have established a rate schedule providing an incentive retail rate for electric heat customers who also have a wood stove, for increased use of energy for each month when compared to the same month in the preceding year. Availability of surplus energy will be determined by Alaska Power Administration.

Character and Conditions of Service: Alternating current, sixty cycles, three-phase, delivered and metered at the low-voltage side of substation.

Monthly Rate: Capacity charge: None. Energy charge: 21.7 mills per kilowatt-hour.

Minimum Annual Capacity Charge: None.

Billing Demand: Not applicable.

Adjustments: For transformer losses: If delivery is made at the high-voltage side of the customer's substation but metered at the low-voltage side, the meter readings will be increased 2 percent to compensate for transformer losses.

[FR Doc. 91-24342 Filed 10-8-91; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. EL91-57-000, et al.]

West Texas Utilities Company, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

October 2, 1991.

Take notice that the following filings have been made with the Commission:

1. West Texas Utilities Co.

[Docket No. EL91-57-000]

Take notice that on September 25, 1991, West Texas Utilities Company ("WTU") tendered for filing a request for waiver of the Commission's fuel adjustment clause ("FAC") regulations to permit recovery of fuel payments deferred during a contract dispute with WTU's primary gas supplier. WTU has now negotiated a settlement with the supplier which requires payment of the disputed fuel amounts earlier deferred.

WTU seeks an effective date of September 25, 1991 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing were served all affected WTU wholesale customers and on the Public Utility Commission of Texas. Copies are available for inspection at WTU's offices in Abilene, Texas.

Comment date: October 22, 1991, in accordance with Standard Paragraph E at the end of this notice.

2. Nantahala Power & Light Co.

[Docket No. ER91-540-001]

Take notice that on September 9, 199., Nantahala Power & Light Company tendered for filing its compliance refund report in the above-referenced docket.

Comment date: October 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

Houlton Water Company, Van Buren Light and Power District and Eastern Maine Electric Cooperative, Inc. v. Maine Public Service Co.

[Docket No. EL91-56-000]

Take notice that on September 25, 1991, Houlton Water Company, Van Buren Light and Power District and Eastern Maine Electric Cooperative, Inc. (Wholesale Customers) tendered for filing a complaint against Maine Public Service Company (MPS). The Wholesale Customers submit that MPS has charged

and is charging the Wholesale Customers rates that are unjust and unreasonable. The Wholesale Customers request that the Commission, acting pursuant to section 206 of the Federal Power Act as amended by the Regulatory Fairness Act: (1) Order a hearing to investigate issues raised in the Complaint, (2) establish a refund effective date in this proceeding at the earliest date permitted by law, (3) determine the just and reasonable rates for service to the Wholesale Customers, (4) order refunds of overpayments made by the Wholesale Customers to MPS, and (5) grant such other relief as the Commission finds appropriate.

Comment date: November 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

4. Duke Power Co. v. Carolina Power & Light Co.

[Docket No. EL91–55–000]

Take notice that on September 24, 1991, Duke Power Company (Duke) tendered for filing a Complaint and Petition for Declaratory Order against Carolina Power & Light Company (CP&L). Duke states that it has filed this Complaint and Petition for Declaratory Order in response to Carolina Power & Light Company's (CP&L) announcement that it has withdrawn from Service Schedule J (Schedule J) to the 1961 Interchange Agreement between CP&L and Duke. Duke requests that the Commission issue an order finding that the effect of the Commission's March 17, 1989 order in Docket No ER89–106–000, which accepted Schedule J for filing and made it effective January 1, 1992, is to obligate Duke to sell and CP&L to purchase the 400 MW of capacity and associated energy in conformance with the terms of the Schedule J agreement, and further, that the Commission order the parties to perform their respective obligations under the filed rate schedule.

Comment date: November 1, 1991, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Electric and Gas Company

[Docket No. ER91–667–000]

Take notice that Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey on September 25, 1991, tendered for filing an agreement for the sale of energy to Long Island Lighting Company (LILCO). Pursuant to the agreement, PSE&G commenced selling on August 1, 1991 and will sell to LILCO energy from time to time as scheduled by LILCO.

PSE&G requests the Commission to waive its notice requirements under section 35.3 of its Rules and to permit the Energy Sales Agreement to become effective as of the commencement of the transaction, August 1, 1991. Copies of the filing have been served upon LILCO.

Comment date: October 16, 1991, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–24235 Filed 10–8–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP91–3216–000, et al.]

K N Energy, Inc., et al; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. K N Energy, Inc.

[Docket No. CP91–3216–000]

October 1, 1991.

Take notice that on September 27, 1991, K N Energy, Inc. (K N), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP91–3216–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to add a new wholesale delivery point to Public Service Company of Colorado (PSCo), and to reassign a portion of the daily contract demand volume under an existing service agreement to the new delivery point, under K N's blanket certificate issued in Docket No. CP83–140–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

K N proposed to construct and operate a new delivery point near the town of Weldona, Colorado, which would be used to serve the local school as well as PSCo's other customers within the Weldona service area. K N states that PSCo has requested a new delivery point referred to as the Weldona Town Border Station, in Section 33, Township 5 North, Range 59 West, Morgan County, Colorado. K N further states that there would be no charge in the total volume presently authorized for delivery to PSCo as a result of the addition of the Weldona TBS. It is explained that K N and PSCo have agreed to reassign 125 Mcf per day of the daily contract demand volume under the existing service agreement from the Sterling TBS No. 1 to the new Weldona TBS. K N advises that there would be no adverse impact on K N's peak day and annual deliveries and that K N has sufficient capacity to accomplish the deliveries without detriment of disadvantage to K N's other customers.

Comment date: November 15, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Natural Gas Pipeline Company of America

[Docket No. CP91–3192–000]

October 1, 1991.

Take notice that on September 24, 1991, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP91–3192–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon, effective April 15, 1991, the sale of natural gas to Northwest Pipeline Corporation (Northwest), all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that in Docket No. CP78–183 Northwest was authorized to transport up to 25,000 Mcf of natural gas for Natural, on an interruptible basis, from Grand County, Utah to El Paso Natural Gas Company (El Paso) in La Plata County, Colorado, from reserves that Natural would develop or otherwise acquire in Northwest's Bar X, Grand Valley and Grand Gas Gathering System in Grand and Uintah Counties, Utah, pursuant to a December 20, 1977 gas purchase, gathering and transportation agreement.

It is stated that in Docket No. CP78–239 El Paso was authorized to transport Natural's Utah gas from the Ignacio receipt point in La Plata County, Colorado to Natural in Ward County, Texas or Lea County, New Mexico pursuant to a January 9, 1978 gas transportation agreement.

It is also stated that in Docket No. CP78–263 Natural was authorized to sell to Northwest up to 25% of all of Natural's gas delivered from the Bar Creek #1 Federal Well, Grand County, Utah, and all other wells that might be developed in Natural's area of interest.

Natural states that pursuant to an April 15, 1991, termination agreement, Natural and Northwest have agreed to terminate the December 20, 1977 agreement, effective April 15, 1991.

Comment date: October 22, 1991, in accordance with Standard Paragraph F at the end of the notice.

3. Gateway Pipeline Co.

[Docket No. CP91–3217–000]

October 2, 1991.

Take notice that on September 27, 1991, Gateway Pipeline Company (Gateway), Post Office Box 1478, Houston, Texas 77001, filed in Docket No. CP91–3217–000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) and subpart F of part 157 of the Commission's Regulations under the NGA for a blanket certificate of public convenience and necessity authorizing Gateway to engage in any of the activities specified in §§ 157.208 through 157.218 of the Commission's Regulations, as may be amended from time to time, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Gateway is a "natural gas company" within the meaning of the NGA and that Gateway will construct a pipeline in Mobile County, Alabama, for open access transportation of natural gas from the Mobile Bay area through United Gas Pipe Line Company's (United) interstate pipeline system. It is further stated that Gateway is a wholly-owned subsidiary of United.

Gateway asserts that it is a transportation only pipeline and that it does not contemplate making sales for resale or providing any storage service. It is stated that Gateway has no currently effective rate schedules providing for sales for resale or storage services.

Comment date: October 23, 1991, in accordance with Standard Paragraph F at the end of this notice.

4. Transcontinental Gas Pipe Line Corp.

[Docket Nos. CP91–3213–000, CP91–3214–000]

October 2, 1991.

Take notice that on September 27, 1991, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in the above-referenced dockets prior notice requests pursuant to section 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of shippers under its blanket certificate issued in Docket No. CP88–328–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection. [1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Transco and is summarized in the attached appendix.

Comment date: November 18, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual Dth	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91–3213–000 (9–27–91)	Aquila Energy Marketing Corporation (marketer).	1,500,000 1,500,000 547,500,000	Various	LA, TX	July 23, 1991, IT, interruptible.	ST91–10282–000 8–1–91
CP91–3214–000 (9–27–91)	Mobil Natural Gas, Inc. (producer).	825,000 500,000 182,500,000	Various	LA, TX	July 8, 1991, IT, interruptible.	ST91–10266–000 8–1–91

5. National Fuel Gas Supply Corp.

[Docket No. CP91–3215–000]

October 2, 1991.

Take notice that on September 27, 1991, National Fuel Gas Supply Corporation (National), filed a prior notice request with the Commission in Docket No. CP91–3215–000 pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate sales tap facilities to attach new residential and commercial customers of National Fuel Gas Distribution Corporation under the blanket certificate issued in Docket No. CP83–4–000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to public inspection.

National proposes to construct and operate four residential sales taps in the Town of Pomfret, Chautauqua County, New York; two in Washington Township, Erie County, Pennsylvania; three in Barnett Township, Jefferson County, Pennsylvania; and one in Sandy Creek Township, Venango County, Pennsylvania. National also proposes to construct and operate commercial sales tap facilities in the Town of Red House, Cattaraugus County, New York, and in the Town of Pomfret, Chatauqua County, New York. National also states that it would deliver up to 43 Mcf of natural gas per peak day and up to 6,800 Mcf annually at these 13 residential and commercial sales tap facilities under its FERC Rate Schedule RQ. National's FERC Gas Tariff does not prohibit the addition of new sales taps and it has sufficient capacity to accomplish its deliveries proposed herein without detriment or disadvantage to its other customers.

Comment date: November 18, 1991, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests

[1] These prior notice requests are not consolidated.

filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's procedural rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 91-24236 Filed 10-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP92-6-000]

Southern and South Georgia Natural Gas Companies; Application

October 3, 1991.

Take notice that on October 2, 1991, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202 and South Georgia Natural Gas Company (South Georgia), filed a joint application in Docket No. CP92-6-000 under section 7(b) and (c) of the Natural Gas Act for permission and approval to abandon firm sales service and for a certificate of public convenience and necessity authorizing new and increased sales service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

South Georgia states that it is authorized to provide firm sales service under Rate Schedule G-2 to the cities of Americus, Bainbridge, Cairo, Dawson, Fitzgerald, Moultrie, Quincy, Quitman and Thomasville, Georgia (collectively refereed to as Municipalities). It is explained that the aggregate Maximum Daily Quantity for the Municipalities is 10,513 Mcf per day. South Georgia further explains that pursuant to a Stipulation and Agreement submitted to the Commission by South Georgia in Docket No. RP89-225-000, *et al.*, the Municipalities agreed to convert their entire firm sales MDQ to firm transportation service on South Georgia's system. Therefore, South Georgia requests authority to abandon sales service to the Municipalities, effective November 1, 1991.

South Georgia states that under Rate Schedule G-1 the City of Jasper, Florida (Jasper) has a sales MDQ of 250 Mcf per day. It is explained that Jasper has that its MDQ be increased to 265 Mcf per day. South Georgia therefore requests authority to increase Jasper's MDQ by 15 Mcf per day.

Southern states that it is authorized to sell South Georgia an aggregate Contract Demand (CD) of 56,216 Mcf per day. Southern states that due to South Georgia requests in this proceeding, Southern requests authority effective November 1, 1991 to reduce South Georgia's CD by 10,498 Mcf per day.

Southern also requests authority to sell 9,356 Mcf of natural gas per day on a firm basis under Rate Schedule OCD-2 to the Municipal Gas Authority of Georgia (MGAG). Southern states that it would deliver the gas to an existing interconnection with South Georgia for transportation by South Georgia on behalf of MGAG to various existing delivery points on South Georgia's system. Southern states that South Georgia would provide the transportation pursuant to its blanket transportation certificate.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 15, 1991, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate, and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Southern and South Georgia to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 91-24238 Filed 10-8-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER91-668-000]

Tucson Electric Power Co.; Filing

October 1, 1991.

Take notice that Tucson Electric Power Company ("Tucson") on September 25, 1991, tendered for filing a Notice of Termination applicable to the "1991 Short Term Power Sale Agreement Between Tucson Electric Power Company And Citizens Utilities Company." Service will terminate on September 30, 1991 as provided pursuant to the terms of the agreement.

The parties request a waiver of the Commission's regulation regarding the filing. The period during which sales were scheduled to be made under this Agreement were May 15, 1991 to September 30, 1991.

Copies of this filing have been served upon all parties affected by this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before October 16, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–24237 Filed 10–8–91; 8:45 am]

BILLING CODE 6717–01–M

Southwestern Power Administration

[Rate Order No. SWPA–25]

Robert D. Willis Power Rate; Notice of Order, Confirming, Approving and Placing Increased Power Rate in Effect on an Interim Basis

AGENCY: Department of Energy, Southwestern Power Administration.

ACTION: Notice of power rate order.

SUMMARY: The Assistant Secretary, Conservation and Renewable Energy, acting under Amendment No. 2 to Delegation Order No. 0204–108, dated August 23, 1991, 56 FR 41835, has confirmed, approved and placed in effect on an interim basis Rate Schedule RDW. The rate schedule supersedes the existing Rate Schedule TB.

EFFECTIVE DATES: Rate Order No. SWPA–25 specifies October 1, 1991, through September 30, 1995, as the effective period for the rate schedule.

FOR FURTHER INFORMATION CONTACT: George C. Grisaffe, Director, Administration and Rates, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 581–7419.

SUPPLEMENTARY INFORMATION: Southwestern's Administrator has prepared the 1991 Current Power Repayment Study for the Robert D. Willis Project based on the annual power rate of $373,068. The study indicates that the power rate is no longer adequate to satisfy cost recovery criteria specified in Department of Energy Order No. RA 6120.2 and section 5 of the Flood Control Act of 1944. The Administrator prepared a 1991 Revised Power Repayment Study for the project which indicated that additional annual revenue of $35,580, or 9.5 percent, is required and will begin October 1, 1991, to satisfy cost recovery criteria. In this regard, the Administrator has determined that the annual rate of $408,648 is the lowest possible rate to the customer consistent with sound business principles. The rate has been approved on an interim basis through September 30, 1995, or until confirmed and approved on a final basis by the Federal Energy Regulatory Commission.

Issued in Washington, DC, this 25th day of September, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

Order Confirming, Approving and Placing Increased Power Rate in Effect on an Interim Basis

Pursuant to sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, for the Southwestern Power Administration (Southwestern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective December 14, 1983, 48 FR 55664, the Secretary of Energy delegated to the Deputy Secretary of Energy on a non-exclusive basis the authority to confirm, approve and place into effect on an interim basis power and transmission rates, and delegated to the Federal Energy Regulatory Commission (FERC) on an exclusive basis the authority to confirm, approve and place in effect on a final basis, or to disapprove power and transmission rates. Amendment No. 1 to Delegation Order No. 0204–108, effective May 30, 1986, 51 FR 19744, revised the delegation of authority to confirm, approve and place into effect on an interim basis power and transmission rates by delegating such authority to the Under Secretary of Energy rather than the Deputy Secretary of Energy. This delegation was reassigned to the Deputy Secretary of Energy by Department of Energy (DOE) Notice 1110.29, dated October 27, 1988, and clarified by Secretary of Energy Notice SEN–10–89, dated August 3, 1989, and subsequent revisions. By Amendment No. 2 to Delegation Order No. 0204–108, effective August 23, 1991, 56 FR 41835, the Secretary of the Department of Energy has revised Delegation Order No. 0204–108 to redelegate to the Assistant Secretary, Conservation and Renewable Energy, the authority which was previously delegated to the Deputy Secretary in that Delegation Order. This rate order is issued by the Assistant Secretary pursuant to said Amendment to Delegation Order No. 0204–108.

Background

Dam B (Town Bluff Dam), located on the Neches River in eastern Texas downstream from the Sam Rayburn Dam, was originally constructed in 1951 by the U.S. Army Corps of Engineers (Corps) and, now, primarily provides streamflow regulation of releases from the Sam Rayburn Dam. The Lower Neches Valley Authority (LNVA) contributed funds toward construction of both projects and makes established annual payments for the right to withdraw up to 2000 cubic feet of water per second from Town Bluff Dam for its own use. Power was legislatively authorized at the project, but installation of hydroelectric facilities was deferred until justified by economic conditions. A determination of feasibility was made in a 1982 Corps study. In 1983 the Sam Rayburn Municipal Power Agency (SRMA) proposed to sponsor the development of hydropower at Town Bluff Dam in return for the output of the project to be delivered to its member municipalities and participating member cooperatives of the Sam Rayburn Dam Electric Cooperative. Since the hydroelectric facilities at the Town Bluff Dam have been completed, the facilities have been renamed the Robert D. Willis Hydroelectric Project.

The Robert D. Willis rate is unique in that it excludes the costs associated with the hydropower design and construction which were performed by the Corps, because all the funds for these costs were provided by SRMA. Under the Southwestern/SRMA power sales contract No. DE–PM–75–84SW00117, SRMA will continue to pay all annual operating and marketing costs, as well as expected capital replacement costs, through the rate paid to Southwestern, and will receive all power and energy produced at the project for a period of 50 years.

The existing annual Robert D. Willis project power rate of $373,068 was confirmed and approved on a final basis by the FERC on December 20, 1989, for the period July 1, 1989 through September 30, 1993. The 1991 Robert D. Willis Current Power Repayment Study (PRS) indicates that the rate is no longer

adequate to satisfy cost recovery criteria for the isolated project. The 1991 Robert D. Willis Revised PRS indicates that an annual rate of $408,648 will be required to satisfy repayment criteria in accordance with Department of Energy Order No. RA 6120.2 and section 5 of the Flood Control Act of 1944. The proposed increase in revenue amounts to $35,580 or 9.5 percent annually and will begin October 1, 1991.

Pursuant to title 10, part 903, subpart A of the Code of Federal Regulations (10 CFR 903), "Procedures for Public Participation in Power and Transmission Rate Adjustments and Extensions", 50 FR 37837, the Administrator, Southwestern, published notice in the **Federal Register** on August 1, 1991, 56 FR 36782, announcing a 30-day period for public review and comment concerning a proposed annual rate of $408,648. In addition, informal meetings were held with interested parties on April 9, and July 15, 1991. Based on the date of publication, written comments were accepted through September 3, 1991. One comment was received on behalf of the present customers, SRMA, which stated that it did not object to the proposed 9.5 percent rate increase for the Robert D. Willis project.

Discussion

The 1991 Current Robert D. Willis PRS tests the adequacy of the existing rate based on the latest cost evaluation period extending from FY 1991 through FY 1995, to cover annual expenses for marketing, operation and maintenance, and to amortize additions to plant and major replacements of the generating facilities. Since the project's design and construction were financed in their entirety by the non-Federal sponsor, SRMA, no component for amortization of the original investment of some $18 million is included in the rate determination. The Current PRS for the Robert D. Willis project, using the existing annual rate of $373,068, indicates that the legal requirements to repay all costs will not be met without additional revenue. This shortfall is primarily a result of a later-than-projected on line date and increased expenses estimated by the Corps at the project. The Revised PRS shows that an additional $35,580 (9.5 percent) annually is needed to satisfy repayment criteria. The proposed rate of $408,648 annually would satisfy the present repayment criteria.

Information regarding this rate proposal, including studies, comments and other supporting material, is available for public review and comment in the offices of the Southwestern Power Administration, One West Third Street, Tulsa, Oklahoma 74103.

Administrator's Certification

The 1991 Revised Robert D. Willis PRS indicates that the increased annual power rate of $406,648 will repay all costs of the project including amortization of additions to plant and major replacements of the generating facilities consistent with provisions of DOE Order No. RA 6120.2. In accordance with Section 1 of Delegation Order No. 0204–108, as amended August 23, 1991, 56 FR 41835, and section 5 of the Flood Control Act of 1944, the Administrator has determined that the proposed Robert D. Willis power rate is consistent with applicable law and is the lowest possible rate consistent with sound business principles.

Environment

The environmental impact of the rate increase proposal was evaluated in consideration of DOE's guidelines for implementing the procedural provisions of the National Environmental Policy Act and was determined to fall within the class of actions that are categorically excluded from the requirements of preparing of either an Environmental Impact Statement or an Environmental Assessment.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm, approve and place in effect on an interim basis, effective October 1, 1991, the proposed annual rate of $408,648 for the sale of power and energy from the Robert D. Willis project to the Sam Rayburn Municipal Power Agency, under Contract No. DE–PM75–85SW00117, as amended. The rate shall remain in effect on an interim basis through September 30, 1995, or until the FERC confirms and approves the rate on a final basis.

Issued at Washington, DC, this 25th day of September 1991.

J. Michael David,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 91–24343 Filed 10–8–91; 8:45 am]

BILLING CODE 6450–01–M

Sam Rayburn Dam Power Rate; Order Approving an Extension of Power Rate on an Interim Basis

AGENCY: Southwestern Power Administration, Department of Energy.

ACTION: Notice of an Extension of Power Rate—Sam Rayburn Dam Project.

SUMMARY: The Assistant Secretary, Conservation and Renewable Energy, acting under Amendment No. 2 to Delegation Order No. 0204–108, dated August 23, 1991, 56 FR 41835, and pursuant to the implementation authorities in 10 CFR 903.22(h) and 903.23(a), has approved Rate Order No. SWPA–24 which extends the existing power rate for the Sam Rayburn Dam Project. This is an interim rate action effective October 1, 1991, and extending for a period of one year through September 30, 1992.

FOR FURTHER INFORMATION CONTACT: George C. Crisaffe, Director, Administration and Rates, Southwestern Power Administration, Department of Energy, P.O. Box 1619, Tulsa, Oklahoma 74101, (918) 581–7419.

SUPPLEMENTARY INFORMATION: The existing rate for the Sam Rayburn Dam project is $1,810,368 per year. The rate was approved on a final basis by the Federal Energy Regulatory Commission on October 11, 1988, for a period ending September 30, 1991. On August 16, 1991, the Southwestern Power Administration (Southwestern) published notice in the **Federal Register**, 56 FR 40893, of its intention of seek a one-year extension of the existing power rate for the Sam Rayburn Dam project and to provide for a 15-day comment period. One comment was received on behalf of Sam Rayburn Dam Electric Cooperative, but no objection was raised to the proposed one-year extension of the existing Sam Rayburn Dam rate. 10 CFR 903.22(h) and 903.23(a) provide implementation authority for such interim extension to the Deputy Secretary. This authority has been redelegated to the Assistant Secretary, Conservation and Renewable Energy, by Amendment No. 2 to Delegation Order No. 0204-108, effective August 23, 1991.

Following review of Southwestern's proposal within the Department of Energy, I approved, Rate Order No. SWPA-24, on September 25, 1991, which extends the existing Sam Rayburn Dam rate for one year beginning October 1, 1991.

Issued at Washington, DC, this 25th day of September, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[Rate Order No. SWPA–24]

Order Approving Power Rate Extension on an Interim Basis

Pursuant to sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95–91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the

Flood Control Act of 1944, 16 U.S.C. 825s, for the Southwestern Power Administration were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204–108, effective December 14, 1983, 48 FR 55664, the Secretary of Energy delegated to the Deputy Secretary of Energy on a non-exclusive basis the authority to confirm, approve and place into effect on an interim basis power and transmission rates, and delegate to the Federal Energy Regulatory Commission (FERC) on an exclusive basis the authority to confirm, approve and place in effect on a final basis, or to disapprove power and transmission rates. Amendment No. 1 to Delegation Order No. 0204–108, effective May 30, 1986, 51 FR 19744, revised the delegation of authority to confirm, approve and place into effect on an interim basis power and transmission rates by delegating such authority to the Under Secretary of Energy rather than the Deputy Secretary of Energy. This delegation was reassigned to the Deputy Secretary of Energy of Energy. This delegation was reassigned to the Deputy Secretary of Energy by Department of Energy Notice 1110.29, dated October 27, 1988, and clarified by Secretary of Energy Notice SEN–10–89, dated August 3, 1989, and subsequent revisions. By Amendment No. 2 to Delegation Order No. 0204–108, effective August 23, 1991, 56 FR 41835, the Secretary of the Department of Energy has revised Delegation Order No. 0204–108 to redelegate to the Assistant Secretary, Conservation and Renewable Energy, the authority which was previously delegated to the Deputy Secretary in that Delegation Order. This rate order is issued by the Assistant Secretary, Conservation and Renewable Energy pursuant to said Amendment to Delegation Order No. 0204–108.

This is an interim rate extension. It is made pursuant to the authorities as implemented in 10 CFR 903.22(h) and 903.23(a).

Background

The Sam Rayburn Dam is located on the Angelina River in the State of Texas in the Neches River Basin. Since the beginning of its operation in 1965, it has been marketed as an isolated project, under a contract with the Sam Rayburn Dam Electric Cooperative, Inc., through the facilities of Gulf States Utilities Company. The contract originally provided for a rate of $79,167 per month ($950,004 annually). Subsequently, this rate has been increased on numerous occasions.

The existing annual Sam Rayburn Dam power rate of $1,810,368 was confirmed and approved on a final basis by the FERC for the period July 1, 1988, through September 30, 1991. The 1991 Sam Rayburn Dam Power Repayment Studies (PRS) indicate the need for a minor rate adjustment of $13,884, or 0.8 percent.

Pursuant to the implementing authorities in 10 CFR 903.22(h) and 903.23(a), the Assistant Secretary, Conservation and Renewable Energy, may extend a FERC-approved rate on an interim basis. The Administrator, Southwestern Power Administration (Southwestern), published notice in the **Federal Register** on August 16, 1991, 56 FR 40893, announcing a 15-day period for public review and comment concerning the proposed interim rate extension. In addition, informal meetings were held with interested parties on April 9, 1991, and July 15, 1991. Written comments were accepted through September 3, 1991. One comment was received on behalf of the Sam Rayburn Dam Electric Cooperative of Livingston, Texas, which stated that it had no objection to the proposed extension of the existing rate for the Sam Rayburn Dam for a 12-month period.

Discussion

The existing Sam Rayburn Dam rate is based on the FY 1987 PRS and was approved on a final basis by the FERC effective July 1, 1988. The FY 1990 PRS was prepared for the Sam Rayburn Dam Project and indicated the need for a 1.4 percent revenue increase. This revenue increase was within the plus-or-minus two percent Rate Adjustment Threshold established by Southwestern's Administrator on June 23, 1987. The Administrator, therefore, deferred this rate adjustment in the best interest of the Government and allowed the FY 1991 PRS to determine the appropriate level of revenues needed for the next rate period.

The 1991 PRS indicates the need for a minor rate increase of 0.8 percent. The primary causes of the FY 1991 increase over the currently-approved FY 1987 PRS are increased Corps of Engineers' Operation and Maintenance (O&M) expense estimates, extension of the cost evaluation period for an additional year, and estimated inflation. This year's need for a rate increase is less than that indicated by last year's PRS due to normal variations in both actual and newly estimated O&M expenses, validating Southwestern's rationale for deferring the rate increase under the Rate Adjustment Threshold. As was the case in FY 1990, the FY 1991 rate adjustment determined to be needed falls within Southwestern's plus-or-minus two percent Rate Adjustment Threshold and would normally be deferred. However, the existing rate of $1,8010,368 will expire on September 30, 1991. Consequently, Southwestern proposed to extend the existing rate for a one-year period ending September 30, 1992, on an interim basis based on the implementation authorities noted in 10 CFR 903.22(h) and 903.23(a).

Southwestern continues to make significant progress toward repayment of the Federal investment in the Sam Rayburn Dam. Through FY 1990, repayment status for the Sam Rayburn Dam Project is $7,479,969, which represents approximately 31 percent of the $23,873,102 Federal investment in the project. The status of repayment has increased almost 35 percent above the $5,541,000 noted by the FERC in its Order issued October 11, 1988.

In formation regarding this rate extension, including studies and other supporting material, is available for public review and comment in the offices of the Southwestern Power Administration, One West Third Street, Tulsa, Oklahoma 74101.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby extend on an interim basis for a period of one year, effective October 1, 1991, the Sam Rayburn Dam Rate of $1,801,368 for the sale of power and energy from Sam Rayburn Dam to the Sam Rayburn Dam Electric Cooperative, Inc., under Contract No. 14–02–0001–1124, as amended.

Issued at Washington, DC, this 25th day of September, 1991.

J. Michael Davis,

Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 91–24344 Filed 10–8–91; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4019–5]

Clean Air Act Advisory Committee Of Open Meeting

SUMMARY: On November 8, 1990, the U.S. Environmental Protection Agency (EPA) gave notice of the establishment of a Clean Air Act Advisory Committee (CAAAC) (55 FR 46993). This Committee was established pursuant to the Federal Advisory Committee Act (5 U.S.C. app I) to provide advice to the Agency on policy and technical issues related to the development and implementation of the requirements of the Clean Air Act Amendments of 1990.

Open Meeting Dates: Notice is hereby given that the Clean Air Act Advisory Committee will hold an open meeting on October 24, 1991 from 8:30 am to 4:00 pm, at the Washington Hilton Hotel, 1919 Connecticut Avenue, N.W., Washington, D.C. Seating will be available on a first come, first served basis but should be fully adequate for all members of the public interested in attending.

The meeting will include a discussion of the status of Clean Air Act implementation efforts, and the impact of energy and transportation factors in implementing the Clean Air Act.

Inspection of Committee Documents: Documents relating to the above noted topics will be publicly available at the meeting. Thereafter, these documents together with the CAAAC meeting minutes will be available for public inspection in EPA Air Docket No. A–90–39 in room 1500 of EPA Headquarters 401 M Street, SW., Washington, DC. Hours of inspections are 8:30 am to 12 noon and 1:30 to 3:30 pm Monday through Friday.

Additional Meeting Date: The next scheduled meeting date for the CAAC is January 16, 1992. This meeting will also be held at the Washington Hilton Hotel.

FOR FURTHER INFORMATION: Concerning the CAAAC or its activities

please contact Mr. Paul Rasmussen, Designated Federal Official to the Committee at (202) 260–7430, FAX (202) 260–4185, or by mail at U.S. EPA, Office of Program Management Operations (ANR–443), Office of Air and Radiation, Washington, DC 20460.

Dated: October 3, 1991.

William G. Rosenberg,

Assistant Administrator, Office of Air and Radiation.

[FR Doc. 91–23424 Filed 10–8–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4019–7]

Public Meeting on EPA's Scientific Reassessment of Dioxin

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting to be held by the U.S. Environmental Protection Agency's (EPA's) Office of Research and Development to inform the public of EPA's scientific reassessment of dioxin, and to receive comment from the public. The public is invited to give oral and written comment on all aspects of the scientific reassessment of dioxin. The meeting will begin with a brief presentation by EPA officials concerning the scientific reassessment of dioxin, followed by a short question and answer period. The rest of the meeting will consist of oral comments by organizations and individuals who indicate an interest to do so in accordance with the procedures described in this notice.

DATES: The meeting will be held on Friday, November 15, 1991, from 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the U.S. Environmental Protection Agency Education Center Auditorium, Waterside Mall, 401 M Street, SW., Washington, DC. Environmental Management Support, Inc., an EPA contractor, is providing logistical support for the public meeting. Members of the public wishing to give oral comment at the meeting on EPA's scientific reassessment of dioxin may request a time by calling Environmental Management Support, Inc., at telephone number (301) 589–0885 no later than 5 p.m. (EST) Wednesday, November 13,1991. Please do not call EPA directly to request a time at this meeting. Only those individuals and organizations that are assigned a time in advance of the meeting will be permitted to give oral comment. Please be advised that oral comment on the day of the meeting will be limited to not more than 5 minutes in order to give everyone an equal opportunity to speak. Because of time limitations, only approximately 30 people who wish to present oral comments can be accommodated at the November 15th meeting.

The EPA would like to receive oral comment from all interested individuals and organizations. Therefore if more than 30 people request time to give oral comment, then the public meeting on EPA's scientific reassessment of dioxin may continue on Monday, November 18 from the hours of 12:30 p.m. to 6 p.m. in the same EPA Auditorium.

Speakers will be informed of the day and time they will be expected to present their oral comments. If there is to be a Monday, November 18th session of the public meeting, this will be announced at the beginning of the Friday, November 15th session.

In addition to oral comments, members of the public may also submit written comments and other materials relevant to EPA's scientific reassessment of dioxin by mail to: Environmental Management Support, Inc., 1010 Wayne Ave., suite 200, Silver Spring, Maryland, 20910, Attention: Dioxin Reassessment.

The public may request a single copy of the summary description of "EPA's Scientific Reassessment of Dioxin" by mail (or FAX) from Environmental Management Support, Inc., in advance of the meeting by calling the number given above. EPA invites public comment on the elements comprising the scientific reassessment of dioxin, which are:

(1) Development of a new biologically-based, dose-response model for dioxin to estimate human health risks; (2) Supporting laboratory research relevant to the development of a new dose-response model; (3) Update and revision of the Health Assessment Document for Dioxin; (4) Update and revision of the Dioxin Exposure Assessment Document; and (5) Supporting research to characterize ecological risks of dioxin in aquatic ecosystems, and the development of an Ecological Risk Characterization Report. The EPA is particularly interested in receiving:

A. New scientific data relevant to the scientific reassessment of dioxin;

B. Any ongoing or recently published scientific research in these areas;

C. Any scientific or technical interpretation and analysis of data relevant to the dioxin reassessment;

D. Suggestions for additional public participation and involvement in EPA's scientific reassessment of dioxin.

INSPECTION AND COPYING: The following EPA documents, relevant to the scientific reassessment of dioxin, are available for public inspection and copying at the EPA Public Information Reference Unit (PIRU), U.S. Environmental Protection Agency Headquarters Library, Waterside Mall, 401 M Street SW., Washington, DC 20460. The hours of inspection and copying are between 8 a.m. and 4:30 p.m. Monday through Friday, except holidays. For persons outside of the Washington, DC area, copies of these documents can be obtained from sources stated.

1. Summary description of "EPA's Scientific Reassessment of Dioxin." This summary may be obtained by written request or by telephone to the EPA support contractor, Environmental Management Support, Inc., 1010 Wayne Ave., suite 200, Silver Spring, Maryland, 20910, Attention: Dioxin Reassessment, telephone number: (301) 589–0885.

2. Health Assessment Document for Polychlorinated Dibenzo-p-Dioxins. U.S. Environmental Protection Agency, Office of Health and Environmental Assessment, Washington, DC. September 1985, EPA/600/8–84/014F. Available from the National Technical Information Service; PB86122546/AS.

3. A Cancer Risk-Specific Dose Estimate for 2,3,7,8–TCDD. (Review Draft). U.S. Environmental Protection Agency, Office of Health and Environmental Assessment, Washington, DC. June 1988. EPA/600/6–88/007Aa. Available from the National Technical Information Service; PB88–231204/AS.

4. A Cancer Risk-Specific Dose Estimate for 2,3,7,8–TCDD. Appendices A Through F. (Review Draft). U.S. Environmental Protection Agency, Office of Health and Environmental Assessment, Washington, DC. June 1988. EPA/600/6–88/007Ab. Available from the National Technical Information Service; PB88–231212/AS.

5. Estimating Exposures to 2,3,7,8–TCDD (Review Draft). U.S. Environmental Protection Agency, Office of Health and Environmental Assessment, Washington, DC. March 1988. EPA/600/6–88/005A. Available from the National Technical Information Service; PB88–231196/AS.

6. Report of the *ad hoc* dioxin panel of the Science Advisory Board: Review of draft documents: "A Cancer Risk-Specific Dose Estimate for 2,3,7,8–TCDD" and "Estimating Exposure to 2,3,7,8–TCDD." U.S. Environmental Protection Agency, Washington, DC. EPA-SAB-EC–90–003. Available for copying at the PIRU.

FOR FURTHER INFORMATION CONTACT: Mr. David Cleverly, Office of Technology Transfer and Regulatory Support (H–8105), Office of Research and Development, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, telephone (202) 260–7891 (FTS: 260–7891).

SUPPLEMENTARY INFORMATION: The purposes of this one-day meeting are to inform the public of EPA's scientific reassessment of dioxin; to invite public review, comment and participation in the process, and to receive any relevant scientific information. The EPA Administrator, William K. Reilly, announced on April 8, 1991, that EPA is conducting a scientific reassessment of the risks of exposure to 2,3,7,8–TCDD and related compounds; collectively known as "dioxin." The EPA is undertaking this task because significant advances have occurred in the scientific understanding of the mechanisms by which dioxin becomes toxic; of the health effects of dioxin in animals and people; of the pathways to human exposure; and of the toxic effects of dioxin to the environment, particularly aquatic organisms.

Based on animal studies, dioxin is one of the most potent carcinogens studied. The Agency has previously prepared assessments of the human health risks from environmental exposures to dioxin in 1985 and 1988. These assessments were reviewed by the EPA's Science Advisory Board (SAB). At the time of the 1988 risk assessment there was general agreement within the scientific community that the standard dose-response approaches were inappropriate for dioxin and should be improved, but there was no consensus identifying a more biologically defensible methodology. The Agency was challenged to explore the development of such a method.

Two important events have recently occurred that impact this reassessment: The NIOSH cancer mortality study of U.S. chemical workers published in the New England Journal of Medicine (Marilyn A. Fingerhut, et. al. "Cancer Mortality in Workers Exposed to 2,3,7,8–Tetrachlorodibenzo-p-Dioxin." January 24,1991, Vol. 324:4, pages 212–218.), and the Banbury Conference on dioxin toxicology held in October, 1990, in Cold Spring Harbor, New York.

The proceedings of the Banbury Conference are not yet published nor available. However it should be noted that it involved many of the leading scientific experts on dioxin. At the meeting, there was general agreement in certain areas of dioxin toxicology, for example:

a. Humans and experimental animals respond to dioxin similarly.

b. Effects in humans can be anticipated by effects observed in experimental animals, e.g., enzyme induction, immunotoxicity, reproductive toxicity, developmental toxicity, and carcinogenicity.

c. Certain stereochemicals (having similar molecular structure) to dioxin may behave the same as dioxin, for example, certain polychlorinated and polybrominated dibenzofurans, polychlorinated and polybrominated dibenzo-p-dioxins, and coplanar chlorinated biphenyls.

d. All toxic effects of dioxin are mediated by the chemicals binding to a protein receptor within the cell cytoplasm, and, therefore, a receptor-based risk assessment model is appropriate and should be developed.

The EPA's scientific reassessment of dioxin is comprised of 5 basic parts:

1. Development of a new biologically-based, dose-response model for dioxin to estimate human health risks;

2. Supporting research relevant to the development of a new dose-response model;

3. Update and revision of the Health Assessment Document for Dioxin;

4. Update and revision of the Dioxin Exposure Assessment Document;

5. Supporting research to characterize ecological risks of dioxin in aquatic ecosystems, and the development of an Ecological Risk Characterization Report. These five basic parts of this intensive effort are summarized in the document, "EPA's Scientific Reassessment of Dioxin," which is available to the public through this notice, and on the day of the public meeting.

Dated: October 3, 1991.

Erich W. Bretthauer,

Assistant Administrator for Research and Development.

[FR Doc. 91–24323 Filed 10–8–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4019–6]

Gulf of Mexico Program Citizens Advisory Committee Meeting

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of meeting of the Citizens Advisory Committee of the Gulf of Mexico Program.

SUMMARY: The Gulf of Mexico Program Citizens Advisory Committee will hold a meeting on October 24–26, 1991 at the Sheraton Inn Plaza Royale, 3777 North Expressway, Brownsville, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. William Whitson, Gulf of Mexico Program Office, Stennis Space Center, MS 39529 at (601) 688–3726, FTS 494–3726.

SUPPLEMENTARY INFORMATION: A meeting of the Citizens Advisory Committee of the Gulf of Mexico Program will be held on October 24–26, 1991 at the Sheraton Inn Plaza Royale in Brownsville, TX. Agenda items will include status reports to the Committee on 1992 Year of the Gulf planning, FY 92 Budget, Gulf of Mexico Comparative Risk Analysis, Gulf Symposium '92, a change to the By-Laws regarding an Alternate Member-at-Large proposal, status reports on the various Action Plans, and reports from the individual Gulf state members. The meeting is open to the public.

Joseph R. Franzmathes,

Assistant Regional Administrator for Policy and Management.

[FR Doc. 91–24321 Filed 10–8–91; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4019–4]

Nonroad Engine and Vehicle Emission Study; Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: On October 30, 1991, the Environmental Protection Agency (EPA) will conduct a public meeting to receive comment on the draft report titled "Nonroad Engine and Vehicle Emission Study." This study was mandated by the 1990 Amendments to the Clean Air Act to be used in assessing the contribution of emissions from nonroad engines and vehicles to air pollution.

DATES: The public meeting will convene at 9 a.m. on October 30, 1991, and will adjourn at such time as is necessary to complete the testimony. Copies of the draft report will be available on October 8, 1991.

ADDRESSES: The meeting will be held at the Ramada Inn Metro Airport, 8270 Wickham, Romulus, Michigan telephone (313) 729–6300. Written comments should be submitted in duplicate to: U.S. Environmental Protection Agency, The Air Docket: Air Docket No. A–91–24, room M–1500 (LE–131), Waterside Mall, 401 M Street SW., Washington, DC 20460.

Materials relevant to this proposed rulemaking are contained in Docket No. A–91–24. The docket is located at the above address and may be inspected from 8 a.m. until noon and from 1:30 p.m.

until 3:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Kevin Green or Clare Ryan, Certification Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105. Telephone: (313) 668–4510, FTS 374/8510 and (313) 668–4577, FTS 374–8577.

SUPPLEMENTARY INFORMATION: Title II of the Clean Air Act (CAA), as amended by the 1990 Clean Air Act Amendments, requires EPA to study emissions from nonroad engines and vehicles to determine the contributions of such sources to air pollution in areas of the country while fail to attain the National Ambient Air Quality Standards (NAAQS) for either ozone or carbon monoxide. In doing this duty, EPA examined ten pollutants emitted by nonroad engines and vehicles using emission data collected both nationally and in twenty-four nonattainment area.

I. Availability of Draft Report

A draft report of this study is completed and available to the public. Copies may be obtained from the public docket, No. A–91–24, at the address provided in **"ADDRESSES."** Copies have also been placed and are available for reviewing and/or duplication at these sites.

- National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161, (703) 487–4650.
- Libraries at Regional EPA Offices.

II. Comments and the Public Docket

EPA welcomes comments on all aspects of this study. All comments, with the exception of proprietary information, should be directed to the EPA Air Docket section, Docket No. A–91–24 (see **"ADDRESSES"**).

Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments by:

- Labeling proprietary information "Confidential Business Information" and
- Sending proprietary information directly to the contact person listed (see **"FOR FURTHER INFORMATION CONTACT"**) and not to the public docket.

Dated: October 3, 1991.

Mark Joyce,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 91–24325 Filed 10–8–91; 8:45 am]

BILLING CODE 6560–50–M

[OPP–60024; FRL–3950–6]

Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notices of intent to suspend.

SUMMARY: This notice, pursuant to section 6 (f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces that EPA has issued Notice(s) of Intent to Suspend pursuant to section 3(c)(2)(B) of FIFRA. The notice(s) were issued following issuance of Data Call-In Notice(s) by the Agency and the failure of registrant(s) subject to the Data Call-In Notice(s) to take appropriate steps to secure the data required to be submitted to the Agency. This notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this notice further identifies the registrant(s) to whom the Notice(s) of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration number(s) and name(s) of the registered product(s) which are affected by the Notice(s) of Intent to Suspend. Moreover, Table B of this notice identifies the basis upon which the Notice(s) of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notice(s) of Intent to Suspend and are governed by the deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notice(s) of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

FOR FURTHER INFORMATION CONTACT: Stephen L. Brozena, Office of Compliance Monitoring (EN–342), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308–8267.

SUPPLEMENTARY INFORMATION:

I. Text of a Notice of Intent to Suspend

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

United States Environmental Protection Agency

Office of Pesticides and Toxic Substances

Washington, DC 20460

Certified Mail

Return Receipt Requested

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____ for Failure to Comply with the 3(c)(2)(B) Data Call-In Notice for _____ Dated _____.

Dear Sir/Madam:

This letter gives you notice that the pesticide product registration(s) listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registration(s) of your product(s) is section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the 3(c)(2)(B) Data Call-In Notice. The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. Affected product(s) and the requirement(s) which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

Attachment III Suspension Report - Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA.

Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75–day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your product(s).

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registration(s) for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, A–110, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30–day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30–day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 3(c)(2)(B) Data Call-In Notice. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance Monitoring (EN-342), Laboratory Data Integrity Assurance Division, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30–day period that you have satisfied the requirement(s) that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registration(s) of your product(s) listed in Attachment I are currently suspended as a result of failure to comply with another section 3(c)(2)(B) Data Call-In Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered product(s) and that you may be held liable for violations committed by your distributors.

If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject 3(c)(2)(B) Data Call-In Notice, please contact Stephen L. Brozena at (703) 308–8267.

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:

Attachment I - Product List

Attachment II - Requirement List

Attachment III - Explanatory Appendix

II. Registrant(s) Receiving and Affected by Notice(s) of Intent to Suspend; Date of Issuance; Active Ingredient and Product(s) Affected

A letter of notification has been sent for the following product(s):

TABLE A—PRODUCT LIST

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Amvac Chemical Corp.	00548100292	Thiram	Thiram Fruit Fungicide	9/25/91

III. Basis for Issuance of Notice of Intent; Requirement List

The following registrant(s) failed to submit the following required data or information:

TABLE B—REQUIREMENT LIST

Active Ingredient	Registrant Affected	Requirement Name	Original Due-Date
Thiram	Amvac Chemical Corp.	30-Day Response (Guideline Reference No: *)	10/5/90

IV. Attachment III Suspension Report--Explanatory Appendix

A discussion of the basis for the Notice of Intent to Suspend follows:

In June 1984, EPA issued a Registration Standard which included a Data Call-In Notice pursuant to the authority of FIFRA section 3(c)(2)(B) which required registrants of products containing thiram used as an active ingredient to develop and submit data. These data were determined to be necessary to maintain the continued registration of affected products. Failure to comply with the data requirements of a Registration Standard is a basis for suspension under section 3(c)(2)(B) of FIFRA.

The Thiram Registration Standard required each affected registrant to submit materials demonstrating selection by the registrant of the options to address the data requirements. The Thiram Registration Standard was initially issued to registrants of manufacturing use and technical products. Subsequently, the Thiram Task Force, the technical source consortium, informed the Agency of their intent to support only registered seed treatment and nonfood uses of thiram. The Task Force informed the Agency that it would not be developing residue data in support of foliar, soil, or root dip applications of thiram on any food crop. As such, the only food use remaining on thiram labels which is currently supported is seed treatments. As a result of the Thiram Task Force's decision, the responsibility for generating the necessary data to maintain the deleted uses shifted to the remaining end-use registrants.

Accordingly, in a letter dated August 27, 1990, the Agency informed you and other end-use registrants of thiram products of the above status, imposed upon you and the other registrants the Thiram Registration Standard data requirements, and required that you inform the Agency within 30 days of your receipt of the letter of the steps you were electing to take regarding the data requirements necessary to support your registration. By letter dated December 6, 1990, which was received by the Agency, you informed the Agency through your agent that AMVAC Chemical Corporation "will not generate any data to support the foliar uses which are included within the instructional text" of the subject thiram product label. Additionally, AMVAC Chemical Corporation stated that it "will not submit revised labeling since the product directions include only foliar uses!" (emphasis in original). This response is not appropriate under the Registration Standard and the August 27, 1990 letter. Because the Agency has not received an adequate or appropriate response from you as a Thiram registrant electing either to undertake the required testing or any other appropriate response (i.e. delete subject uses by amending registration and submitting revised labeling), the Agency is initiating through this Notice of Intent to Suspend the actions which FIFRA requires it to take under these circumstances.

V. Conclusions

EPA has issued Notice(s) of Intent to Suspend on the dates indicated. Any further information regarding the Notice(s) may be obtained from the contact person noted above.

Dated: October 3, 1991.

Michael M. Stahl,

Director, Office of Compliance Monitoring.

[FR Doc. 91-24326 Filed 10-8-91; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL EMERGENCY MANAGEMENT AGENCY

National Flood Insurance Program; Proposed Fee Schedule for Processing Map Changes for FY 1992

AGENCY: Federal Insurance Administration (FIA), Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice contains the proposed fee schedule to be effective through September 30, 1992, for processing certain changes to the NFIP maps. The initial fees, pre-authorized spending limits, and hourly rate to be effective through September 30, 1992, for conditional Letters of Map Amendment (CLOMAs) and conditional Letters of Map Revision (CLOMRs) have been established through prior rule-making. The procedures for calculating the initial fees, pre-authorized spending limits, and hourly rate for engineering review and administrative processing of Letters of Map Revision (LOMRs) and map revisions listed in this notice are published for comment in the proposed rule for 44 CFR part 72 elsewhere in this **Federal Register.**

This action is being undertaken to reduce expenses to the National Flood Insurance Program (NFIP), by allowing for partial recovery of certain costs associated with reviewing projects intended to support changes in NFIP maps. These projects frequently involve the placement of fill, stream channelizations, or construction of

bridges, culverts, or levees. In addition, these projects are typically limited in scope and are often effected solely to reduce flood risk to a limited area of the floodplain proposed for development so as to offer relief from flood insurance purchase requirements of Public Law 93–234 (87 Stat. 975), codified as sections 4012a(a) and 4012a(b) of 42 U.S.C. or to secure financing or other benefits.

These fees collected under this activity will be deposited into the National Flood Insurance Fund which is the source of funding for this service. Cost recovery will contribute to maintaining the NFIP as self-supporting.

DATES: Comments must be received on or before December 9, 1991.

SEND COMMENTS TO: Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Federal Insurance Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, telephone: (202) 646–2767.

SUPPLEMENTARY INFORMATION: The proposed fee schedule to be effective through September 30, 1992, sets forth the fees to be charged for review and processing of certain changes to NFIP maps and would go into effect as of the effective date of the final rule amending 44 CFR part 72. The initial fees, pre-authorized spending limits, and hourly rate for CLOMAs and CLOMRs have been established through prior rulemaking. The procedures for determining initial fees, pre-authorized spending limits and hourly rate for LOMRs and map revisions are published for comment in the proposed rule for 44 CFR part 72 elsewhere in this **Federal Register.**

Since the primary component of the fees is the prevailing private sector labor rate charged to FEMA for review and processing of the map changes, the fees will vary due to inflation and other economic fluctuations. Therefore, beginning in calendar year 1992, a revised fee schedule will be published annually by August 1, as a notice in the **Federal Register,** so as to be effective the first day of each subsequent fiscal year. These fees are intended to reduce expenses to the NFIP by allowing for a partial recovery of certain costs associated with effecting these map changes.

In the proposed fee schedule the initial fees are listed according to the type of flood control project involved. The appropriate initial fee would be required to be paid by those seeking a LOMR or map revision prior to FEMA's initiation of the review. The initial fee represents the minimum engineering review and administrative processing costs for a LOMR or map revision based on the type of project. The initial fee does not include costs for labor and materials associated with the cartographic processing and preparation of a map revision. The cartographic costs vary depending on the number of map panels affected and the complexity of the changes being incorporated. Therefore, these costs will be calculated on a case-by-case basis. However, based on recent experience, these costs average approximately $2,800 per map panel.

If it is determined that the actual cost associated with the review and processing of a LOMR or map revision will exceed the amount remitted for the initial fee, the requestor will be billed and will have to remit payment prior to receiving FEMA's final determination.

The pre-authorized spending limits listed in the fee schedule below denote the amount at which FEMA will suspend review of a given case and seek written authorization from the requestor prior to proceeding with the review. This limitation gives the requestor the option of discontinuing the review at that time. This affords the requestor protection against the possibility of a given review becoming more costly than anticipated by the requestor.

Initial Fee Schedule

The hourly rate for FY 1992, upon which the following fees and preauthorized spending limits are based, is $35 per hour.

(a) for CLOMAs and for CLOMRs, the initial fees, to be effective through September 30, 1992, have been established by prior rulemaking. Those initial fees, subject to the provisions of § 72.4, shall be paid by the requestor in the following amounts:

(1) Single lot CLOMA	$175
(2) Single lot CLOMR (based strictly on the proposed placement of fill outside the regulatory floodway)	175
(3) Multi-lot/Subdivision CLOMA	245
(4) Multi-lot/Subdivision CLOMR (based strictly on the placement of fill outside the regulatory floodway	245
(5) Review of new hydrology	245
(6) New bridge or culvert (no channelization)	490
(7) Channel modifications only	560
(8) Channel modification and new bridge or culvert	735
(9) Levees, berms, or other structural measures	945
(10) Structural measures on alluvial fans	2,800

(b) For LOMRs or map revisions that are in followup to a CLOMR issued by FEMA, the initial fee, subject to the provisions of § 72.4, for all categories listed under paragraph (c) below will be $200, so long as the as-built conditions are the same as the proposed conditions upon which FEMA based the issuance of the CLOMR. There are no fees for LOMAs, and no fees for single-lot LOMRs, which are not part of a new subdivision, and are based strictly on the placement of fill outside of the regulatory floodway, regardless of whether they are issued in followup to a CLOMA or CLOMR.

(c) For LOMRs or map revisions which are not in followup to a CLOMR issued by FEMA, the initial fee, subject to the provisions of § 72.4, shall be paid by the requestor in the following amounts:

(1) Multi-lot/Subdivision LOMR (based strictly on the placement of fill outside the regulatory floodway)	445
(2) New bridge or culvert (no channelization)	690
(3) Channel modification only	760
(4) Channel modification and new bridge or culvert	935
(5) Levees, berms, or other structural measures	1,145
(6) Structural measures on alluvial fans	3,000

(d) For projects involving combinations of the actions listed under paragraphs (a), (b), or (c) above, the initial fee shall be that charged for the most expensive action of those that compose the combination.

(e) Following completion of FEMA's review for any CLOMA, CLOMR, LOMR, or map revision, the requestor will be billed at the established hourly rate for any actual costs exceeding the initial fee incurred during the review. The hourly rate is currently $35.00 per hour.

(1) In the event that the revision request results in a map revision, the requestor will be notified and billed for costs of cartographic preparation and processing of the revised map. This work will not be initiated until FEMA has received payment. The cost of reprinting and distributing the revised Flood Insurance Rate Map (FIRM) and/or Flood Boundary Floodway Map (FBFM) will be borne by FEMA.

(f) Requestors of CLOMAs, CLOMRs, LOMRs and map revisions will be notified of the anticipated total cost if the total cost of processing the request, including estimated costs for cartographic preparation and processing

of a map revision, will exceed the pre-authorized spending limits listed in (1) through (4) below. The pre-authorized spending limits vary according to the type of review performed and are based on the established hourly rate.

(1) CLOMAs, CLOMRs, LOMRs and map revisions based on fill outside the regulatory floodway	$700
(2) CLOMRs for the review of new hydrology and CLOMRs, LOMRs and map revisions based on channel modifications, bridges and culverts, or a combination of these	1,500
(3) CLOMRs, LOMRs and map revisions based on levees, berms, or other structural measures	2,500
(4) CLOMRs, LOMRs and map revisions based on structural measures on alluvial fans	5,000

(g) In the event that processing costs are anticipated to exceed the pre-authorized spending limits listed in (1) through (4) above, processing of the request will be suspended pending FEMA receipt of written approval from the requestor to proceed.

(h) The entity that applies to FEMA through the local community for review will be billed for the cost of the review.

The local community incurs no financial obligation for fees under the reimbursement procedures of 44 CFR part 72 as a result of transmitting the application by another party to FEMA.

(i) Payment of both the initial fee and final cost shall be by check or money order payable to the National Flood Insurance Program and must be received by FEMA before the CLOMA, CLOMR, or LOMR will be issued, or before the cartographic processing will begin for a map revision.

Dated: September 23, 1991.

C.M. "Bud" Schauerte,

Federal Insurance Administrator.

[FR Doc. 91-23952 Filed 10-8-91; 8:45 am]

BILLING CODE 6718-03-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, on or before October 29, 1991. The requirements for comments and protests are found in § 560.7 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No: 224-003565-006.

Title: Puerto Rico Ports Authority/ Caribe Shipping, Inc. Marine Terminal Agreement.

Parties: Puerto Rico Ports Authority Caribe Shipping, Inc.

Filing Party: Mr. Zulma I. Perez Coordinators, Real States, Contractors, Insurance & Claims Commonwealth of Puerto Rico Ports Authority G.P.O. Box 2329 San Juan, Puerto Rico 00936.

Synopsis: The Agreement, filed September 27, 1991, provides for Caribe Shipping, Inc. to lease from the Puerto Rico Ports Authority 59,562.32 square feet of pier platform (East and West) and 82,579 square feet of warehouse, located at Pier No. 9.

By Order of the Federal Maritime Commission.

Dated: October 3, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-24251 Filed 10-8-91; 8:45 am]

BILLING CODE 6730-01-M

Notice of agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, on or before October 21, 1991. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-010896-010.

Title: Maryland Port Administration and Moller Steamship Line, Inc. (Maersk) Terminal Lease Agreement.

Parties: Maryland Port Administration (MPA), Moller Steamship Line, Inc. (Maersk) (Moller-Maersk).

Synopsis: The amendment extends this lease agreement for an additional sixty (60) days, pending the final negotiations of a long term lease between the parties.

Agreement No.: 224-200262-005

Title: Georgia Ports Authority/ Sagumex Terminal Agreement.

Parties: Georgia Ports Authority, Hapag-Lloyd (America) Inc., Gulf Container Line B.V. ("GCL"), Compagnie Cenerale Maritime ("CGM").

Synopsis: The proposed amendment deletes CGM as a party to the Agreement and changes CGL's name to Atlantic Container Line B.V. It also changes all references to "Sagumex" in the Agreement to "Atlantic Service".

Agreement No.: 224-200294-003.

Title: Georgia Ports Authority/ Japanese Three Lines Terminal Agreement.

Parties: Georgia Ports Authority, Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha, Nippon Liner System, Ltd.

Synopsis: The proposed amendment revises the rate schedule of the Agreement in accordance with Agreement provisions.

Agreement No.: 203-010050-008.

Title: U.S.-Flag Far East Discussion Agreement.

Parties: American President Lines, Ltd., Sea-Land Service, Inc., Waterman Steamship Corporation.

Synopsis: The proposed amendment would delete Waterman Steamship Corporation as a party to the Agreement. It would delete all references to foreign-to-foreign transportation in the geographic scope. It would also make other nonsubstantive changes to the Agreement.

Agreement No.: 202-010683-046.

Title: Transpacific Westbound Rate Agreement.

Parties: American President Lines, Ltd., Kawasaki Kisen Kaisha, Ltd., A.P. Moller-Maersk Line, Mitsui O.S.K. Lines, Ltd., Nepturen Orient Lines, Ltd., Nippon Yusen Kaisha, Ltd., Sea-Land Service, Inc.

Synopsis: The proposed amendment would restate the Agreement and make corrections of past clerical errors.

Agreement No.: 203-011117-008.

Title: United States/Australasia Interconference and Carrier Discussion Agreement

Parties: Pacific Coast/Australia-New Zealand Tariff Bureau, Blue Star Line, Ltd., Ocean Star Container Line A.G., Wilhelmsen Lines AS, U.S. Atlantic & Gulf/Australia-New Zealand

Conference, Associated Container Transportation (Australia) Ltd., Australia-New Zealand Direct Line, Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft Eggert & Amsinck, Nedlloyd Lines.

Synopsis: The Proposed amendment would add Blue Star Pace Limited as a party to the Agreement. It would delete Associated Container Transportation (Australia) Limited, Blue Star Line, Ltd. and Nedlloyd Lines as parties to the Agreement. The parties have requested a shortened review period

By Order of the Federal Maritime Commission.

Dated: October 3, 1991.

Joseph C. Polking,

Secretary.

[FR Doc. 91-24252 Filed 10-8-91; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 91-39]

American Transport Lines, Inc. Versus General Electric Co.; Filing of Complaint and Assignment

Notice is given that a complain filed by American Transport Lines, Inc. ("Complainant") against General Electric Co. ("Respondent") was served October 3, 1991. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. 1709(1)(1), by failing and refusing to pay ocean freight and other charges lawfully assessed pursuant to Complainant's applicable tariff on three trucks shipped from Miami, Florida to Maracaibo, Venezuela on or about November 15, 1989.

This proceeding has been assigned to Administrative Law Judge Joseph N. Ingolia "(Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by October 5, 1992, and the final decision of the Commission shall be issued by February 2, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 91-24261 Filed 10-8-91; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 91-40]

American Transport Lines, Inc. v. Georgia Pacific Corp.; Filing of Complaint and Assignment

Notice is given that a complaint filed by American Transport Lines, Inc. ("Complainant") against Georgia Pacific Corp. ("Respondent") was served October 3, 1991. Complainant alleges that Respondent engaged in violations of section 10(a)(1) of the Shipping Act of 1984, 46 U.S.C. 1709(a)(1), by failing and refusing to pay ocean freight and other charges lawfully assessed pursuant to Complainant's applicable tariff on two shipments of nineteen forty-foot containers, and to contain 1520 bales of pulpwood, from Florida to Brazil, on or about October 13, 1990.

This proceeding has been assigned to Administrative Law Judge Joseph N. Ingolia ("Presiding Officer"). Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by October 5, 1992, and the final decision of the Commission shall be issued by February 2, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 91-24262 Filed 10-8-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

First Busey Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 31, 1991.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Busey Corporation, Urbana, Illinois; to acquire Busey Interim Federal Savings and Loan Association, Urbana, Illinois, an Interim thrift formed for the purpose of acquiring certain assets and assuming certain liabilities of the Urbana, Illinois, and St. Joseph, Illinois branches of American Savings, a division of Citizens Federal Bank, Miami, Florida, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y. The interim thrift will be merged with Busey Bank, Urbana, Illinois, in an Oakar transaction. These activities will be conducted in Urbana and St. Joseph, Illinois.

Board of Governors of the Federal Reserve System, October 3, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-24273 Filed 10-8-91; 8:45 am]

BILLING CODE 6210-01-F

Barrett L. L. James, et al.; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than October 25, 1991.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Barrett L. L. James, Omaha, Nebraska; to acquire an additional 27.04 percent for a total of 33.30 percent; M. Allison James, Chicago, Illinois, to acquire an additional 27.08 percent for a total of 33.35 percent; and Lawrence R. James II, Omaha, Nebraska, to acquire an additional 27.08 percent of the voting shares of American Interstate Bancorporation, Inc., Omaha, Nebraska, for a total of 33.35 percent, and thereby indirectly acquire Bank of Elkhorn, Elkhorn, Nebraska.

Board of Governors of the Federal Reserve System, October 3, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-24272 Filed 10-8-91; 8:45 am]

BILLING CODE 6210-01-F

KeyCorp, et al.; Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 31, 1991.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. KeyCorp, Albany, New York; to engage *de novo* through its subsidiary, NCB Properties, Inc., Albany, New York, in acquiring from direct or indirect bank and nonbank subsidiaries of KeyCorp loans secured by real estate which are in default or which are otherwise troubled assets; to service, collect and liquidate such loans; to engage in loan workout and loan restructuring activities in connection with such loans including the making of additional extensions of credit to the borrowers on such loans pursuant to §§ 225.25(b)(1) and (b)(23) of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Capital Directions, Inc., Mason, Michigan; to engage *de novo* through its subsidiary, Monex Financial Services, Inc., d/b/a/ Monex Financial Planning, Mason, Michigan, in consumer financial counseling pursuant to § 225.25(b)(20) of the Board's Regulation Y. These activities will be conducted in the Great Lakes region.

2. Mahaska Investment Company, Oskaloosa, Iowa; to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 3, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-24274 Filed 10-8-91; 8:45 am]

BILLING CODE 6210-01-F

Union Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than October 31, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. Union Bancshares, Inc., Blairsville, Georgia; to merge with Fannin Bancshares, Inc., Blue Ridge, Georgia, and thereby indirectly acquire Peoples Bank of Fannin County, Blue Ridge, Georgia.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230

South LaSalle Street, Chicago, Illinois 60690:

1. First Neighborhood Bancshares, Inc., Toledo, Illinois; to acquire 100 percent of the voting shares of Greenup National Corp., Belleville, Illinois, and thereby indirectly acquire Greenup National Bank, Greenup, Illinois.

Board of Governors of the Federal Reserve System, October 3, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-24275 Filed 10-8-91; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

[File No. 871 0093]

Southbank IPA, Inc., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Florida association and its 23 obstetrician/gynecologist members to dissolve Southbank IPA and Southbank Health Care Corp.; would prohibit each physician from entering into any agreement with any competing physician to fix, stabilize, or tamper with any fee, price, or other aspect or term associated with any physician's services; and would prohibit the physicians from dealing with any third-party payor on collectively determined terms.

DATES: Comments must be received on or before December 9, 1991.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: James Egan, Jr., FTC/H-380, Washington, DC 20580. (202) 326-2886.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's rules of practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of SOUTHBANK IPA, INC., a corporation, SOUTHBANK HEALTH CARE CORP., INC., a corporation, Wade Barnes, M.D., Ernest Ferrell, M.D., Cynthia Flanders, M.D., Donald Freedman, M.D., James Hayes, M.D., John Huddleston, M.D., James Joyner, M.D., Hormoz Khosravi, M.D., Peter McCranie, M.D., H. Wyatt McNeill, M.D., Herman Miller, M.D., Qudratullah Mojadidi, M.D., Richard Myers, M.D., Paul Oberdorfer, M.D., Norman Pack, M.D., Wilford Paulk, M.D., R. William Qunilan, M.D., Alexander Rosin, M.D., Wilbur Rust, M.D., Kenneth Sekine, M.D., Jeffrey Stowe, M.D., Carol Wyninger, M.D., and Vernon Zeigler, M.D.

The Federal Trade Commission having initiated an investigation of certain acts and practices of the proposed respondents, and it is now appearing that the proposed respondents are willing to enter into an agreement containing an order to cease and desist from engaging in the acts and practices being investigated,

It is Hereby Agreed, By and Between the proposed respondents and their duly authorized attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Southbank IPA, Inc., and proposed respondent Southbank Health Care Corp., Inc., are corporations organized, existing, and doing business under and by virtue of the laws of the State of Florida, with their offices and principal places of business located in Jacksonville, Florida. Their registered agent is Ms. Barbara Suddath Strickland, Mahoney, Adams, Mylam, Surface & Grimsley, 100 Laura Street, Jacksonville, Florida 32202.

2. Wade Barnes, M.D., Ernest Ferrell, M.D., Cynthia Flanders, M.D., Donald Freedman, M.D., James Hayes, M.D., John Huddleston, M.D., James Joyner, M.D., Hormoz Khosravi, M.D., Peter McCranie, M.D., H. Wyatt McNeill, M.D., Herman Miller, M.D., Qudratullah Mojadidi, M.D., Richard Myers, M.D., Paul Oberdorfer, M.D., Norman Pack, M.D., Wilford Paulk, M.D., R. William Quinlan, M.D., Alexander Rosin, M.D., Wilbur Rust, M.D., Kenneth Sekine, M.D., Jeffrey Stowe, M.D., Carol Wyninger, M.D., and Vernon Zeigler, M.D. (hereinafter "proposed physician respondents") are obstetrician/gynecologists practicing or who have practiced at Southern Baptist Hospital of Florida, Inc. d/b/a Baptist Medical Center, Jacksonville, Florida. Each proposed physician respondent is or has been licensed and does or has done business under and by virtue of the laws of the State of Florida. Their addresses are as follows:

Wade Barnes, M.D., 836 Prudential Drive, suite 1202, Jacksonville, Florida 32207;

Ernest Ferrell, M.D., 836 Prudential Drive, suite 1800, Jacksonville, Florida 32207;

Cynthia Flanders, M.D., 4205 Belfort Road, suite 3004, Jacksonville, Florida 32216;

Donald Freedman, M.D. 4130 Salisbury Road, suite 2000, Jacksonville, Florida 32216;

James Hayes, M.D., 836 Prudential Drive, suite 1608, Jacksonville, Florida 32207;

John Huddleston, M.D., 25 Prescott Street, NE., Atlanta, Georgia 30308;

James Joyner, M.D., 580 W. 8th Street, suite 711, Jacksonville, Florida 32209;

Hormoz Khosravi, M.D., 4123 University Boulevard, suite D, Jacksonville, Florida 32216;

Peter McCranie, M.D., 836 Prudential Drive, suite 1203, Jacksonville, Florida 32207;

H. Wyatt McNeill, M.D., 820 Prudential Drive, suite 502, Jacksonville, Florida 32207;

Herman Miller, M.D., 820 Prudential Drive, suite 306, Jacksonville, Florida, 32207;

Qudratullah Mojadidi, M.D., 580 W. 8th Street, suite 6007, Jacksonville, Florida 32209;

Richard Myers, M.D., 836 Prudential Drive, suite 1001, Jacksonville, Florida 32207;

Paul Oberdorfer, M.D., 1501 San Marco Boulevard, Jacksonville, Florida 32207;

Norman Pack, M.D., 836 Prudential Drive, suite 1001, Jacksonville, Florida 32207;

Wilford Paulk, M.D., 836 Prudential Drive, suite 1001 Jacksonville, Florida 32207;

Raymond William Quinlan, M.D., 836 Prudential Drive, suite 1800, Jacksonville, Florida 32207;

Alexander Rosin, M.D., 820 Prudential Drive, suite 408 Jacksonville, Florida 32207;

Wilbur Rust, M.D., 820 Prudential Drive, suite 215, Jacksonville, Florida 32207;

Kenneth Sekine, M.D., 836 Prudential Drive, suite 802, Jacksonville, Florida 32207;

Jeffrey Stowe, M.D., 836 Prudential Drive, suite 802, Jacksonville, Florida 32207;

Carol Wyninger, M.D., 1501 San Marco Boulevard, Jacksonville, Florida 32207; and

Vernon Zeigler, M.D. 4205 Belfort Road, suite 3004, Jacksonville, Florida 32216.

3. Proposed respondents Southbank IPA, Inc., and Southbank Health Care Corp., Inc., and proposed physician respondents, admit all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed respondents Southbank IPA, Inc., and Southbank Health Care Corp., Inc., and proposed physician respondents, waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's rules of practice, the commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' counsel as identified in this agreement shall constitute service. Proposed respondents Southbank IPA, Inc., and Southbank Health Care Corp., Inc., and proposed physician respondents, waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, respresentation, or interpretation not contained in the order of the agreement may be used to vary or contradict the terms of the order.

8. Proposed respondents Southbank IPA, Inc., and Southbank Health Care Corp., Inc., and proposed physician respondents, have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents Southbank IPA, Inc. and Southbank Health Care Corp., Inc., and proposed physician respondents, further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after the order becomes final.

Order

I.

For purposes of this Order, the following definitions shall apply:

A. *Southbank IPA* means Southbank IPA, Inc., and its Board of Directors, committees, officers, representatives, agents, employees, successors, and assigns.

B. *Southbank Health Care Corp.* means Southbank Health Care Corp., Inc., and its Board of Directors, committees, officers, representatives, agents, employees, successors, and assigns.

C. *Physician respondents* means the obstetrician/gynecologist members of Southbank IPA and shareholders of Southbank Health Care Corp. named in PARAGRAPH TWO of the complaint.

D. *Third-party payor* means any person or entity that reimburses for, purchases, or pays for all or any part of the health care services provided to any other person, and includes, but is not limited to: health insurance companies; prepaid hospital, medical, or other health service plans, such as Blue Shield and Blue Cross plans; health maintenance organizations; preferred provider organizations; government health benefits programs; administrators of self-insured health benefits programs; and employers or other entities providing self-insured health benefits programs.

E. *Integrated joint venture* means a joint arrangement to provide health care services, on a prepaid or other basis, in which physicians who would otherwise be competitors pool their capital to finance the venture, by themselves or together with others, and share substantial risk of adverse financial results caused by unexpectedly high utilization or costs of health care services.

II.

It is Ordered That each physician respondent, directly or indirectly or through any corporate or other device, in connection with the provision of health care services in or affecting commerce, as *commerce* is defined in section 4 of the Federal Trade Commission Act, as amended, forthwith shall cease and desist from entering into, attempting to enter into, organizing or attempting to organize, implementing or attempting to implement, or continuing or attempting to continue any combination, agreement or understanding, express or implied, with any other physician respondent(s), or with any competing physician(s), to:

A. fix, stabilize, or tamper with any fee, fee schedule, price, pricing formula, conversion factor, or other aspect or term of the fees charged or to be charged for any physician's services; or

B. Deal with any third-party payor on collectively determined terms by, among other things:

(1) Agreeing or combining, attempting to agree or combine, or taking any action, directly or indirectly in furtherance of any agreement or combination to fix, stabilize, or tamper with the amount, manner of calculation, or any term of reimbursement or payment from, or the price or any term of purchase by any third-party payor for any physician's services;

(2) Agreeing with another physician or physicians to negotiate, or acting jointly with other physician or physicians, directly or indirectly (*e.g.*, through any agent or representative), to negotiate with any third-party payor concerning any term, requirement, or other aspect of being, becoming, or remaining a participating physician in any third-party payor or any program or plan of any third-party payor;

(3) Agreeing or acting jointly with another physician or physicians, directly or indirectly, to boycott or threaten to boycott, to refuse or threaten to refuse to deal with, to withdraw or threaten to withdraw from participation in, or not to participate or threaten not to participate in, any third-party payor or any program or plan of any third-party payor; or

(4) Agreeing or acting jointly another physician or physicians, directly or indirectly, to coerce or threaten to coerce, or to pressure, induce, encourage, influence, urge, or advise any physician to boycott or threaten to boycott, to refuse or threaten to refuse to deal with, to withdraw or threaten to withdraw from participation in, or not to participate or threaten not to participate in, any third-party payor or any program or plan of any third-party payor.

Provided, however, That nothing in this Order shall prohibit any physician respondent from:

(1) Entering into an agreement or combination with any physician with

whom the physician respondent practices medicine in partnership, or in a professional corporation, or who is employed by the same person as the physician respondent, to deal with any third-party payor on collectively determined terms;

(2) Forming, facilitating the formation of, or participating in an integrated joint venture and dealing with any third-party payor on collectively determined terms through the joint venture, as long as the physicians participating in the joint venture remain free to deal individually with any third-party payor that it declines to deal with the integrated joint venture, and the third-party payor is on notice that the physicians are free to deal individually with the third-party payor at any time that declines to deal with the integrated joint venture;

(3) Offering to participate or participating with other physicians in bonafide utilization review, quality assurance, or credentialing activities in connection with the provision of physician services, or in any bona fide program for the professional peer review of fees charged by individual physicians in individual cases;

(4) Exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency or legislative body concerning legislation, rules or procedures, or to participate in any federal or state administrative or judicial proceeding; or

(5) Providing information or views, individually or collectively with other physicians, to any third-party payor concerning any issue, including reimbursement.

III.

It is Further Ordered That the physician respondents shall:

A. Dissolve Southbank IPA and Southbank Health Care Corp. within one hundred eighty (180) days after the date on which this Order becomes final; and

B. File a verified written report demonstrating how they have complied with Paragraph III.A. of this Order within two hundred ten (210) days after the date on which this Order becomes final.

IV.

It is Further Ordersed That respondents Southbank IPA and Southbank Health Care Corp. shall:

A. Within thirty (30) days after the date on which this Order becomes final, and prior to the dissolutions provided for in Paragraph III.A. of this Order, distribute by first-class mail a copy of this Order and the accompanying complaint to each third-party payor doing business in Duval County, except that for purposes of this Paragraph IV.A. of this Order, the phrase "employers or other entities providing self-insured health benefits programs," as otherwise included in the definition of "third-party payor" in Paragraph I.D. of this Order, shall be limited to the entities enumerated in the Appendix attached to this Order; and

B. Within sixty (60) days after the date on which this Order becomes final, and prior to the dissolutions provided for in Paragraph III.A. of this Order, file a verified written report demonstrating how they have complied with Paragraph IV.A. of this Order.

V.

It is Further Ordered, That each physician respondent shall:

A. File a verified written report with the Commission within sixty (60) days after the date on which this Order becomes final, and annually thereafter for three (3) years on the anniversary of the date the Order became final, and at such other times as the Commission, by written notice, may require, setting forth in detail the manner and form in which he or she has complied and is complying with this Order. As part of any report filed pursuant to this Paragraph V.A. of this Order, each physician respondent shall notify the Commission if he or she has discontinued the practice of medicine, discontinued the practice of obstetrics or gynecology, moved his or her practice to a different address, or entered into any new medical practice whose activities involve the provision of obstetrical or gynecological services in Duval County, Florida. Such report shall include the physician respondent's new business address and a statement of the nature of the new business or employment in which the physician respondent is newly engaged, as well as a description of the physician respondent's duties and responsibilities in connection with the business or employment;

B. For a period of five (5) years after the date on which this Order becomes final, notify the Commission in writing within thirty (30) days after he or she forms or participates in the formation of, or joins or participates in, any integrated joint venture as described in proviso (2) to Paragraph II. of this Order; and

C. For a period of five (5) years after the date on which this Order becomes final, maintain and make available to Commission staff, for inspection and copying upon reasonable notice, records sufficient to describe in detail any joint activities undertaken pursuant to any of the provisos to Paragraph II. of this Order.

Appendix

Alliance Mortgage Company, 25 West Forsyth Street, Jacksonville, FL 32202.

Allied-Bendix Corporation, 7575 Baymeadows Way, Jacksonville, FL 32216.

Alton Packaging Corporation, P.O. Box 4484, Jacksonville, FL 32216.

American Transtech, 8000 Baymeadows Way, Jacksonville, FL 32216.

Anheuser Busch, Inc., P.O. Box 18017, Jacksonville, FL 32219.

Atlantic Drydock, P.O. Box 138, Jacksonville, FL 32226.

Barnett Bank of Jacksonville, 100 Laura Street, Jacksonville, FL 32202.

Container Corporation, North Eighth Street, Fernandina Beach, FL 32034.

Duval Federal Savings and Loan Association, 1 North Hogan Street, Jacksonville, FL 32202.

Florida Publishing Company, P.O. Box 1949F, Jacksonville, FL 32231.

Florida Rock Industries, Inc., 155 East 21st Street, Jacksonville, FL 32206.

Gate Petroleum Company, 9540 San Jose Boulevard, Jacksonville, FL 32217.

Huntley Jiffy Stores, Inc., 1890 Kingsley Avenue, Orange Park, FL 32073.

ITT Rayonier, Inc., P.O. Box 2002, Fernandina Beach, FL 32034

Jacksonville Kraft Paper Company, Inc., P.O. Box 18019, Jacksonville, FL 32229.

Jacksonville Shipyards, Inc., P.O. Box 2347, Jacksonville, FL 32203.

Maxwell House Division, 735 East Bay Street, Jacksonville, FL 32202.

North Florida Shipyards, Inc., P.O. Box 3863, Jacksonville, FL 32202.

Revlon Professional Products, P.O. Box 37557, Jacksonville, FL 32236.

SCM Corporation, P.O. Box 389, Jacksonville, FL 32218.

Sears, Roebuck & Company, 9501 Arlington Expressway, Jacksonville, FL 32211.

Southern Bell, 20th Floor #4BB1, 301 West Bay Street, Jacksonville, FL 32201.

Suddath Van Lines, Inc., 5266 Highway Avenue, Jacksonville, FL 32205.

Vistakon, Inc., 1417 San Marco Boulevard, Jacksonville, FL 32207.

SOUTHBANK IPA, INC.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Southbank IPA, Inc. ("Southbank IPA"), Southbank Health Care Corp., Inc. ("Southbank Health Care Corp."), and twenty-three obstetrician/gynecologists ("physician respondents") who practice in Jacksonville, Florida ("proposed respondents"). The agreements would settle charges by the Federal Trade Commission that the proposed respondents violated section 5 of the Federal Trade Commission Act by combining or conspiring to fix the fees they charge to third-party payors, to boycott third-party payors, and otherwise to restrain competition among obstetrician/gynecologists in Jacksonville, Florida.

The Complaint

A complaint has been prepared for issuance by the Commission along with the proposed order. It alleges that the physician respondents constitute nearly the entire active staff of obstetrician/gynecologists at Baptist Medical Center and, when acting in concert, effectively control access to Baptist Medical Center's obstetrical/gynecology facilities and services. The physician respondents formed Southbank Health Care Corp., and Southbank IPA. Southbank IPA is a subsidiary of Southbank Health Care Corp., and is controlled by it. The physician respondents are shareholders of Southbank Health Care Corp., and constitute the membership of Southbank IPA.

The complaint alleges that beginning in 1986, the physician respondents agreed whether, and on what terms, they would treat subscribers or enrollees of at least some third-party payors' health care plans or programs. The physician respondents conspired to resist efforts by third-party payors: (a) To obtain low fees from the physician respondents for their services; and (b) to implement other policies and requirements designed to contain costs and enhance the quality of services for consumers.

To further the conspiracy, the physician respondents:

A. Formed Southbank IPA and Southbank Health Care Corp. to negotiate collectively on their behalf with third-party payors;

B. Agreed to refuse to contract individually with any third-party payor that had a contract with, or was in the process of negotiating a contract with, Southbank IPA;

C. Agreed not to enter into contracts with any other individual practice association ("IPA") or similar organization to treat third-party payors' subscribers at Baptist Medical Center without the permission of Southbank IPA;

D. Agreed on a schedule of the fees to be charged by physician respondents, as members of Southbank IPA, to third-party payors for obstetrical/gynecological services provided by the physician respondents pursuant to agreements entered into between Southbank IPA and third-party payors.

E. Agreed on a list of "negotiating points" for their representatives from Southbank IPA to use in negotiations with third-party payors as to the terms on which the physician respondents, through Southbank IPA, would contract with, or become participating physicians, in, third-party payors or their plans or programs.

The complaint further alleges that unlike many other physician groups that have formed IPA,s the physician respondents have not placed themselves jointly at financial risk for losses that might occur from Southbank IPA's operation. Unlike other IPAs, Southbank IPA does not provide new or more efficient services, or enable its members to provide new or more efficient services. Southbank IPA is a vehicle created by the physician respondents to facilitate their engaging in collective decisions on fees and other terms to be

sought from third-party payors, and to collectively pressure or coerce third-party payors to accept those fees and terms.

The complaint alleges that upon its formation in May, 1987, Southbank IPA requested its members to submit to it letters of resignation from SunCare HMO, Inc. ("SunCare HMO") and SunCare IPA, Inc. ("SunCare IPA") and suggested language for the letters. All of the physician respondents submitted resignation letters to Southbank IPA. Southbank IPA forwarded the letters to SunCare HMO and SunCare IPA. When contacted individually, each physician respondent refused to deal with SunCare HMO except collectively, through Southbank IPA.

In 1987, under threat of a concerted boycott by the physician respondents, SunCare HMO agreed to increase its payments to the physician respondents. In 1989, the physician respondents acting collectively through Southbank IPA, again threatened to boycott SunCare HMO unless it agreed to increase its payments to them. For the second time, SunCare HMO was forced to increase its payments to the physician respondents. These increased payments raised SunCare HMO's costs and were passed on to SunCare HMO's subscribers and enrollees in the form of higher premiums.

Finally, the complaint alleges that the proposed respondents' actions have injured consumers in Jacksonville, Florida, by, among other things, restraining trade unreasonably and hindering competition among obstetrician/gynecologists, fixing and/or increasing the fees that obstetrician/gynecologists receive from third-party payors, and depriving consumers and third-party payors of the benefits of competition among obstetrician/gynecologists.

The Proposed Consent Order

The proposed consent order would require the physician respondents to dissolve Southbank IPA and Southbank Health Care Corp. In addition, the consent order would prohibit each physician respondent from entering into or attempting to enter into any agreement or understanding with any competing physician, to: (1) Fix, stabilize, or tamper with any fee, price, or other aspect or term of the fees charged or to be charged for any physician's services (2) deal with any third-party payor on collectively determined terms.

The proposed order would not prohibit the physician respondents from: (1) Entering into agreements with physicians with whom they are partners, who are members of the same professional corporation, or who are employed by the same person as respondent; (2) entering into agreements with physicians as participants in an integrated joint venture, as long as the physician participants are free to deal individually with any third-party payor that declines to deal with the integrated joint venture, and the third-party payor is on notice that the physicians are free to deal individually with the third-party payor at any time that it declines to deal with the integrated joint venture; (3) participating in bona fide utilization review, quality assurance, credentialling, or peer review programs; (4) exercising rights permitted under the First Amendment to the United States Constitution to petition any federal or state government executive agency or legislative body concerning legislation, rules, or procedures, or to participate in any federal or state administrative or judicial proceeding; or (5) providing information or views to any third-party payor concerning any issue, including reimbursement.

The proposed order also would require the proposed respondents to: (1) Mail copies of the complaint and order to third-party payors doing business in Duval County; (2) file compliance reports with the Commission; (3) notify the Commission if a physician respondent discontinues the practice of medicine or the practice of obstetrics or gynecology, moves his or her practice to a new business address, or enters a new medical practice whose activities involve the provision of obstetrical or gynecological services in Duval County, Florida; (4) notify the Commission if the physician respondent joins any integrated joint venture; and (5) maintain and make available for inspection and copying by Commission staff records sufficient to describe certain joint undertakings involving the proposed respondents.

The purpose of this analysis is to facilitate public comment on the proposed order. The analysis is not intended to constitute an official interpretation of the agreement and proposed order or to modify its term in any way.

The proposed order was entered into for settlement purposes only and does not constitute an admission by any of the proposed respondents that the law has been violated as alleged in the complaint.

Donald S. Clark,

Secretary.

[FR Doc. 91–24305 Filed 10–8–91; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Runaway and Homeless Youth Proposed Priorities for Fiscal Year 1992

AGENCY: Administration for Children and Families (ACF), Department of Health and Human Services (DHHS).

ACTION: Notice of proposed fiscal year 1992 Runaway and Homeless Youth Program priorities for the Administration for Children and Families.

SUMMARY: The Runaway and Homeless Youth Act requires the Department to publish annually for public comment a proposed plan specifying priorities the Department will follow in awarding grants and contracts under this title. Final priorities selected will take into consideration the comments and recommendations received from the field in response to this notice.

The public, particularly those knowledgeable about and experienced in providing services to runaway and homeless youth, are urged to respond. In implementing the final priorities, the actual solicitations for grant applications will be published at a later date in the **Federal Register.** Solicitations for contracts will be published in the "Commerce Business Daily." No proposals, concept papers or other forms of application should be submitted at this time.

DATES: To be considered, comments must be received no later than November 25, 1991.

ADDRESSES: Please address comments to: Wade F. Horn, Ph.D., Commissioner, Administration on Children, Youth and Families. Attention: Family and Youth Services Bureau, P.O. Box 1182, Washington, DC 20013, (202) 245–0102.

SUPPLEMENTARY INFORMATION:

I. Purposes and Background

The purposes of the Runaway and Homeless Youth Act (the Act) are to improve services for and increase knowledge about runaway and homeless youth and their families. This Act is administered by the Family and Youth Services Bureau (FYSB) of the Administration on Children, Youth and Families (ACYF).

The Act authorizes financial assistance to establish or strengthen community-based projects (basic centers) designed to address the immediate service needs of runaway

and homeless youth and their families through providing temporary shelter, counseling, aftercare, and related services. Currently 370 such projects are being supported. The Act also authorizes support for transitional living projects that provide long-term shelter and training (for up to 18 months) for youth ages 16 through 21 who are at risk of long-term dependency on the public welfare system. Currently 77 such projects are being supported.

The Act also authorizes financial support for:

- A national communication system (a toll-free 24-hour National Runaway Switchboard which serves as a neutral channel of communication between at-risk youth and their families and as a source of referral to needed services);
- Grants to statewide and regional non-profit organizations for the provision of training and technical assistance to agencies and organizations eligible to establish and operate runaway and homeless youth centers; and
- Grants for research, demonstration, evaluation, and service projects.

II. Annual Program Priorities

In general, the mission of the Family and Youth Service Bureau is to empower individuals and organizations to provide effective, comprehensive services to youth in at-risk situations and their families, ensuring the safety and maximizing the stability and long-term self-sufficiency of such youth.

In administering the Runaway and Homeless Youth Act, FYSB has established the following policy objectives for the coming year. First, to provide timely financial support to and quality oversight of youth programs in order to strengthen such programs and ensure that quality services are available to runaway and homeless youth. Second, to increase and improve the reliability of information on runaway and homeless youth programs, their effectiveness, and related issues. And third, to provide training, technical assistance and related support to the youth-serving community to help increase the knowledge and skills of youth service workers and organizations. The FY 1992 proposed priorities are designed to achieve these objectives.

As required by section 364 of the Act, we are proposing for public comment the following FY 1992 priorities and are soliciting specific comments and recommendations on these priorities. We also encourage suggestions for topics not covered in this announcement, but which are timely and relate to the specific needs of runaway and homeless youth.

Commentors should be aware that section 366(a)(2) requires that 90 percent of the funds appropriated under part A of the Runaway and Homeless Youth Act be used to establish and strengthen runaway and homeless youth basic centers. Total funding under part A of the Act for fiscal year 1992 is expected to be approximately $35.1 million, depending on Congressional action.

In providing suggestions and recommendations, commentors should also be aware of research and demonstration projects supported by ACYF in previous years. These include:

- Developing home-based services as an alternative to out-of-home placements;
- Promoting transitional living/independent living collaboration;
- Enhancing cooperation between law enforcement agencies and runaway and homeless youth centers;
- Preventing alcohol abuse among minority youth;
- Demonstrating integrated treatment for dysfunctional families of at-risk youth by runaway and homeless youth basic centers;
- Developing transitional living/independent living programs for homeless youth;
- Promoting Private Industry Council (PIC) youth employment partnerships with centers for runaway and homeless youth;
- Mainstreaming troubled youth;
- Improving participation of minority youth in runaway and homeless youth centers; and
- Preventing youth suicide.

For further information concerning these and other research and demonstration projects supported by ACYF in earlier years, commentors are invited to contact Mr. Edward Bradford, Family and Youth Services Bureau, P.O. Box 1182, Washington, DC 20013, telephone (202) 245–0060.

No acknowledgement will be made of the comments received in response to this notice, but all comments received by the deadline will be considered in preparing the final runaway and homeless youth funding priorities. Final priorities will be published in the **Federal Register** prior to December 31, 1991, as required by the Act.

A program announcement soliciting applications for the basic center grants will appear in the **Federal Register** as in previous years. Copies of the announcement will be sent to all persons who comment on these proposed priorities. Because all FY 1992 funds which are likely to be available for the National Communication System (NCS) and the Transitional Living Program (TLP) are committed for continuation awards to projects already funded in FY 1991 or earlier, no new solicitations are planned for publication in these two areas in FY 1992. Also, because all FY 1992 funds which are likely to be available for research and demonstration projects related to runaway and homeless youth under the Coordinated Discretionary Funds Program (CDP) are committed for continuation awards to projects funded in FY 1991 or earlier, no new solicitations in this area are planned for publication in FY 1992. Solicitations for contracts for selected evaluation priorities will be published in the "Commerce Business Daily" during FY 1992.

A. Priorities for Runaway and Homeless Youth Basic Centers

Part A, section 311 of the Act authorizes the Department to make grants to public and private entities to establish and operate local runaway and homeless youth basic centers. These centers provide services in support of the immediate needs (temporary shelter, food, clothing, counseling, and related services) of runaway or otherwise homeless youth and their families in a manner which is outside the law enforcement structure and the juvenile justice system.

Approximately 370 grants, of which about one-third will be competitive new awards, will be funded in FY 1992 to support organizations which provide services to fulfill the four major goals of the Runaway and Homeless Youth Program. These goals are to:

1. Alleviate the problems of runaway and homeless youth;
2. Reunite youth with their families and encourage the resolution of intrafamily problems through counseling and other services;
3. Strengthen family relationships and encourage stable living conditions for youth; and
4. Help youth decide upon a future course of action.

An announcement of the availability of funds for the basic centers, along with the instructions and forms needed to prepare and submit applications, will be published in a **Federal Register** announcement.

Funds for basic center grants are allotted annually among the States and other qualifying jurisdictions on the basis of their relative populations of individuals who are less than 18 years of age. For the past several years, basic center grants have been awarded for three-year project periods.

Approximately one-third of the basic center grants expire each year, requiring these agencies to compete for new awards. The remaining two-thirds of the basic center grants receive non-competitive continuation awards. Within any given State, in consequence, individual grantees may fall within any one of three different funding cycles: New starts, second-year continuations, and third-year continuations. In FY 1992, this cyclical funding pattern will be continued, assuming satisfactory performance on the part of the grantees and availability of funds. Thus, approximately two-thirds of the current grantees will be awarded noncompetitive continuation funds, and the remaining grantees (those whose grant periods expire in FY 1992) will be required to submit new competitive applications. Readers should note that all other eligible youth-serving agencies not holding current awards may also apply for these new competitive funds.

In the years preceding FY 1991, this cyclical funding pattern and the changing levels of the annual appropriations had led to some variation in grant amounts from year to year. In those years in which Federal funding had increased substantially for the overall program, competing (new-start) applicants had an opportunity to receive substantial increases in their grant awards while non-competing (continuation) grantees had been denied the opportunity to compete for comparable increases. In addition, a number of grantees receiving relatively small annual awards (e.g., under $25,000, as opposed to the national average in FY 1990 of approximately $75,000) had become locked into repeating cycles of small awards. In view of this situation, grantees scheduled to receive continuation awards under $75,000 in FY 1991 were invited to submit expansion requests that, if successfully competed, would allow their total FY 1991 awards to rise up to $75,000. Seventy-six such expansion requests were received in FY 1991, and expansion grants were awarded to 50 of these applicants in addition to their continuation funding. If sufficient funds are available, this expansion opportunity will be offered again in FY 1992 to those continuation grantees scheduled to receive less than $75,000. The purposes of this policy are to strengthen programs and to increase equity among basic center grantees.

B. Priorities for a National Communications System

Part A, section 313 of the Runaway and Homeless Youth Act, as amended, mandates support for a National Communications System to assist runaway and homeless youth in communicating with their families and with service providers. In FY 1991, a three-year grant was awarded to Metro Help, Inc., of Chicago to operate the system. It is anticipated that $750,000 in second-year continuation funds will be awarded to the grantee in FY 1992.

C. Priorities for Transitional Living Grants

Part B, section 321 of the Runaway and Homeless Youth Act, as amended, authorizes grants to establish and operate Transitional Living projects for homeless youth. This program is structured to help older, homeless youth achieve self-sufficiency and avoid long-term dependency on social services. Transitional Living projects provide shelter, skills training, and support services to homeless youth ages 16 through 21 for a continuous period not exceeding 18 months.

The first 45 Transitional Living grants were awarded in September, 1990, for three-year project periods. An additional 32 grants were awarded in FY 1991, also for three-year project periods. It is anticipated that all funds available in this program in FY 1992 will be awarded in the form of non-competitive continuation awards to the current grantees.

D. Enhancing the Proficiency of Youth Service Workers and Providers

Both the Runaway and Homeless Youth Act, Section 314, and the Drug Abuse Prevention Program for Runaway and Homeless Youth, Section 3511 of the Anti-Drug Abuse Act of 1988, also administered by FYSB, authorize support to nonprofit organizations for the purpose of providing training and technical assistance (T&TA) to runaway and homeless youth service providers. This T&TA is a valuable mechanism to strengthen programs and to enhance the knowledge and skills of youth service workers. For several years prior to FY 1991, this T&TA was provided through coordinated networking grantees, one in each of the ten Federal Regions. Each of the coordinated networks had a dual function: First, to establish and strengthen coalitions of youth agencies through networking services (newsletters, conferences, computer bulletin boards, and related communications activities) in the respective Regions, and second, to provide T&TA to the staffs of individual basic centers, largely through site visits and workshops conducted by the professional staffs of the networks.

Beginning in FY 1991, the Family and Youth Services Bureau adopted a new approach to providing training and technical assistance. Ten cooperative agreements were awarded, one in each of the ten Federal regions. Each cooperative agreement is unique, being based on the characteristics and different T&TA needs in the respective regions. The earlier emphasis on coalition building and formal instruction by the professional staffs of the networks has been replaced by a new emphasis on developing systems of cooperative interchange among the grantees. Each agreement provides for the transmittal of knowledge and skills from the most proficient youth service professionals in the different centers to less experienced staff in their own and other programs. The responsibility of the new grantees is to facilitate this cooperative interchange.

The earlier emphasis on networking was dropped, the national and regional networking goals of the previous years having been, in large part, achieved.

Each of these cooperative agreements has a three-year project period, and it is anticipated that all funds available for services in this area in FY 1992 will be awarded through noncompeting continuations to the current grantees.

To strengthen programs and to promote integration of services, the exchanges of information among agencies and staffs, and the consequent enhancement of the skills and knowledge among youth service workers and providers, will take place across the three runaway and homeless youth programs administered by the Family and Youth Services Bureau: The Runaway and Homeless Youth Basic Centers Program (RHYP), the Transitional Living Program (TLP), and the Drug Abuse Prevention Program (DAPP).

E. Priorities for Research, Demonstration, and Service Projects

Section 315 of the Act authorizes the Department to make grants to States, localities, and private entities to carry out research, demonstration, and service projects designed to increase knowledge concerning, and to improve services for, runaway and homeless youth. These activities are important in order to identify emerging issues and to develop and test models which address such issues.

1. Grants for Research, Demonstration, and Service Projects

In FY 1991, through the Coordinated Discretionary Funds Program (CDP) of the former Office of Human Development Services (OHDS) (now incorporated into the Administration for Children and Families (ACF)), new

multi-year research and demonstration projects were funded in the areas of:

a. *Home-Based Services: An Alternative to Out-of-Home Shelter.* These projects are developing home-based intervention models, including mediation, designed to meet the needs of at-risk youth and their families.

b. *Transitional Living/Independent Living Collaborations.* These demonstrations are developing and testing models of interagency collaboration between projects funded under the Transitional Living Program for Homeless Youth and the Independent Living Initiatives Program for youth in foster care under title IV–E of the Social Security Act.

In FY 1992, it is anticipated that all Runaway and Homeless Youth Program (RHYP) grant funds available for the Coordinated Discretionary Funds Program (CDP) will be awarded in the form of second-year continuations to the projects funded in FY 1991.

2. Contracts for Research, Demonstration, Evaluation and Service Projects

A number of activities are being proposed to improve the information base on which the runaway and homeless youth programs are founded and to collect and disseminate information to the youth-serving organizations. The following projects, which will be funded through new contracts, are proposed for FY 1992:

a. *National Evaluation of the Home-Based Services Programs for Runaway and Homeless Youth.* Demonstration grants under the new Home-Based Services Program of the Runaway and Homeless Youth Program were funded in FY 1991. This evaluation, to be completed in two years, will provide descriptive information about the programs and outcome information regarding their impact on runaway and homeless youth.

b. *Management Information System (MIS) Implementation.* This proposed project, with an initial funding period of three years, will implement a mandatory FYSB MIS across all RHYP grantees; will provide software, user documentation of the system, and technical assistance to bring grantees on-line; will make updates and system changes; and will produce local and national reports.

c. *Clearinghouse on Runaway and Homeless Youth.* This proposed project, with an initial funding period of three years, will establish a clearinghouse for the dissemination of materials to agencies providing services to runaway and homeless youth. Activities will include the collection, analysis, synthesis, packaging, and dissemination of findings and products of past and current FYSB research and demonstration grantees.

d. *Monitoring Support for Runaway and Homeless Youth Grantees (Basic Centers, Transitional Living Projects, and Drug Abuse Prevention Projects).* This proposed project, of which the initial phase is to be completed in one year, will develop monitoring tools and site visit protocols for the three target programs, leading to a comprehensive monitoring system that utilizes a peer review model. Two additional years of funding are planned to provide ongoing support of this peer review monitoring system.

It is anticipated that incremental or continuation funding will be provided to continue the following activities:

e. *Evaluation of the Transitional Living Program (TLP) for Homeless Youth.* The contractor is evaluating the effects of the TLP grants funded in FY 1990 and FY 1991 on the youth served.

f. *National Evaluation of the Runaway and Homeless Youth Centers—A Follow-Up Study.* The contractor is evaluating the impact and effects of the Runaway and Homeless Youth Basic Center Program on the youth served.

3. Interagency Agreement for a Research, Demonstration, and Service Project

The Administration on Children, Youth and Families is exploring the possibility of contributing RHYP funds, through an Interagency Agreement with the Centers for Disease Control, as partial support to ongoing projects to prevent HIV infection among runaway and homeless youth.

(Catalog of Federal Domestic Assistance, Program Number 93.623, Runaway and Homeless Youth)

Dated: August 15, 1991.

Wade F. Horn,

Commissioner, Administration on Children, Youth and Families.

Approved: September 11, 1991.

Jo Anne B. Barnhart,

Assistant Secretary for Children and Families.

[FR Doc. 91–24221 Filed 10–8–91; 8:45 am]

BILLING CODE 4130–01–M

Alcohol, Drug Abuse, and Mental Health Administration

National Institute on Drug Abuse; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the advisory committees of the National Institute on Drug Abuse for November 1991.

The initial review groups will be performing review of applications for Federal assistance; therefore, portions of these meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552b(c)(6) and 5 U.S.C. app. 2 10(d).

Summaries of the meetings and rosters of committee members may be obtained from: Ms. Camilla L. Holland, NIDA Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration, Parklawn Building, room 10–42, 5600 Fishers Lane, Rockville, MD 20857 (Telephone: 301/443–2755).

Substantive program information may be obtained from the contacts whose names, room numbers, and telephone numbers are listed below.

Committee Name: Biobehavioral/Clinical Subcommittee, Drug Abuse AIDS Research Review Committee.

Meeting Date: November 12–13, 1991.

Place: Hyatt Regency Hotel, One Bethesda Metro Center; Bethesda, Maryland 20814.

Open: November 12, 9 a.m. to 9:30 a.m.

Closed: Otherwise.

Contact: Iris W. O'Brien, Room 10–42, Parklawn Building, Telephone (301) 443–2620.

Committee Name: Sociobehavioral Subcommittee, Drug Abuse AIDS Research Review Committee.

Meeting Date: November 12–14, 1991.

Place: Hyatt Regency Hotel, One Bethesda Metro Center; Bethesda, Maryland 20814.

Open: November 12, 9 a.m. to 9:30 a.m.

Closed: Otherwise.

Contact: H. Noble Jones, room 10–22, Parklawn Building, Telephone (301) 443–9042.

Dated: October 4, 1991.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 91–24348 Filed 10–8–91; 8:45 am]

BILLING CODE 4160–20–M

Health Care Financing Administration

Notice of Hearing: Reconsideration of Disapproval of Wisconsin State Plan Amendment (SPA) 91–09

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing at 10 a.m. on November 19, 1991, in the 15th Floor Conference Room, 105 W. Adams Street, Chicago, Illinois to reconsider our decision to disapprove Wisconsin SPA 91–09.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by October 24, 1991.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, Suite 110, Security Office Park, 7000 Security Blvd, Baltimore, Maryland 21207, Telephone: (301) 597–3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Wisconsin State Plan amendment (SPA) 91–09.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

If the hearing is later rescheduled, the Hearing Officer will notify all participants.

Wisconsin SPA 91–09 contains a list of Medicaid obstetrical and pediatric payment rates, data alleging at least 50 percent of obstetrical and pediatric practitioners are full Medicaid participants, and a discussion of initiatives taken by the State to increase practitioner participation. The State also provided data explaining how fee-for-service payment rates for obstetrical and pediatric services are incorporated into the capitation rates for Medicaid contracting health maintenance organizations (HMOs).

The issue here whether the plan amendment meets the statutory requirements of section 1926(a) of the Act and thus, also complies with section 1902(a)(30)(A) of the Act.

Section 1926 of the Act as added by section 6402 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239, requires that by no later than April 1 of each year (beginning in 1990), States are to submit plan amendments specifying their payment rates for obstetrical practitioner services and pediatric practitioner services. States also must provide specific information to document that those payment rates are sufficient to enlist enough providers such that obstetrical and pediatric services are available to Medicaid recipients at least to the extent that such services are available to the general population in the geographic area (section 1902(a)(30)(A) of the Act). In addition, States must submit data to document that payments to HMOs take into account payment rates for fee-for-service obstetrical and pediatric services.

HCFA is developing its final policy concerning what data and information are required to determine that the State is in compliance with section 1902(a)(30)(A) of the Act. HCFA has, however, determined that for obstetrical and pediatric rate SPAs to be approvable, they must include the following:

1. Payment rates for this year and next year (i.e., 1991 and 1992) for those obstetrical and pediatric services covered under the State's plan. Pediatric rates must be specified by procedure; we recommend the same format for obstetrical services;

2. Data that document that payment rates for obstetrical and pediatric services are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general population in the geographic area; and

3. Data that document that payment rates to HMOs under section 1903(m) of the Act take into account the payment rates given in number 1 above.

HCFA has also developed several guidelines that, if met by the State, would evidence that the State meets the statutory requirements of section 1926 of the Act. These guidelines are set forth in a draft State Medicaid manual (SMM) revision dated March 26, 1990.

Based upon the data submitted, HCFA has determined that Wisconsin's amendment does not comply with the statutory requirements of section 1926 of the Act and, thus, also does not comply with section 1902(a)(30)(A) of the Act.

The State argued that it met the statutory criteria under guideline 1 of the draft SMM revision. It permits the State to document its compliance with the statute by submitting data showing that at least 50 percent of obstetrical and pediatric practitioners are full Medicaid participants or that Medicaid participation is at the same rate as Blue Shield participation. The State claims that it exceeds the 50 percent criteria. Although the State presents a number of arguments which have substantial merit, HCFA believes it is unable to provide sufficient data necessary to meet the statutory requirements. Specifically, the State has not provided a break-out of the data for general practitioners and family practitioners by those who provide obstetrical care, pediatric care, or both obstetrical and pediatric care. Therefore, HCFA is unable to accurately determine the rate of obstetrical and pediatric practitioners in Medicaid.

The State also cited the reimbursement methodology for nurse midwives and also indicated that, on 7/1/90, certified nurse practitioners began to bill independently and are reimbursed at the same level as physicians for those obstetrical services they perform within their scope of practice. However, it appears that the State has not included participation data or accounted for those obstetrical and pediatric nonphysician practitioners cited in the statutory definition of obstetrical and pediatric services. If nonphysician practitioners, such as certified nurse practitioners or nurse midwives, render obstetrical or pediatric services in Wisconsin, HCFA believes they should be included in the State's data.

In addition, HCFA believes it is not clear whether clinic data has been incorporated into the Pediatric and Obstetric Physician Participation chart. The State indicated that in areas where individual physicians are not immediately available, recipients have full access to clinic services for obstetrical and pediatric services. Clinics do not fall within the definition of obstetrical or pediatric services as defined in section 1926(a)(4) of the Act. These definitions include only individual providers in the singular while specifically excluding inpatient or outpatient hospital services or other institutional services. In light of this, HCFA believes the intent of Congress was to exclude services delivered on an outpatient basis by clinics. In fact, the payment mechanism, at 42 CFR 447.321, is the same for clinic services and outpatient hospital services. Therefore, any data submitted to document the State's compliance with the practitioner participation standard set forth in the

March 26, 1990 draft SMM must exclude clinics.

HCFA believes this does not mean that the State cannot use clinic data to help prove access. For example, a statement such as "* * * in rural areas where a shortage of physicians that provide these services exists for the general population as well as for Medicaid recipients, recipients have access * * *" may be an acceptable rationale, provided the general population has the same access problems to individual practitioners as Medicaid recipients. HCFA believes the State still needed to provide a specific statement to that effect for every appropriate substate geographic area to which it applied.

The State indicated that claims data show that Medicaid recipients in Wisconsin received services from an additional 168 pediatricians and 134 family practitioners who filed claims from out-of-state. HCFA believes that where the State cites out-of-state practitioners, Wisconsin needs to specify not only the location of such practitioners, but also must indicate the appropriate substate geographic areas which are serviced by such out-of-state practitioners. The State must document that access patterns are the same for both Medicaid recipients and the general population.

The notice to Wisconsin announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mr. Kevin B. Piper,
Director, Bureau of Health Care Financing, Division of Health, Wisconsin Department of Health and Social Services, P.O. Box 309, Madison, Wisconsin 53701-0309.

Dear Mr. Piper: I am responding to your request for reconsideration of the decision to disapprove Wisconsin State Plan Amendment (SPA) 91-09. Wisconsin submitted SPA 91-09 to establish the State's compliance with section 1926 of the Social Security Act (the Act).

Section 1926 of the Act as added by section 6402 of the Omnibus Budget Reconciliation Act of 1989, Public Law 101-239, requires that by no later than April 1 of each year (beginning in 1990), States are to submit plan amendments specifying their payment rates for obstetrical practitioner services and pediatric practitioner services. States also must provide specific information to document that those payment rates are sufficient to enlist enough providers such that obstetrical and pediatric services are available to Medicaid recipients at least to the extent that such services are available to the general population in the geographic area (section 1902(a)(3)(a) of the Act). In addition, States must submit data to document that payments to Health Maintenance Organizations take into account payment rates for fee-for-service obstetrical and pediatric services.

The issue in this matter is whether the plan amendment meets the statutory provisions of section 1926(a) of the Act and thus, also complies with section 1902(a)(30)(A) of the Act.

I am scheduling a hearing on your request for reconsideration to be held at 10 a.m. on November 19, 1991, in the 15th Floor Conference Room, 105 West Adams Street, Chicago, Illinois. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR part 430.

I am designating Mr. Stanley Krostar as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (301) 597-3013.

Sincerely,

Gail R. Wilensky,
Administrator.

Authority: Section 1116 of the Social Security Act (42 U.S.C. 1316); 42 CFR 430.18. (Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: September 27, 1991.

Gail R. Wilensky,
Administrator, Health Care Financing Administration.

[FR Doc. 91-24309 Filed 10-8-91; 8:45 am]
BILLING CODE 4120-03-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of November 1991:

Name: Maternal and Child Health Research Grants Review Committee.

Date and Time: November 20-22, 1991, 9 a.m.

Place: MCHB Conference Room, 9th Floor, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Open on November 20, 1991, 9 a.m.-10 a.m.

Closed for remainder of meeting.

Purpose: To review research grant applications in the program area of maternal and child health administered by the Bureau of Maternal and Child Health and Resources Development.

Agenda: The open portion of the meeting will cover opening remarks by the Director, Division of Systems, Education and Science, Maternal and Child Health Bureau, who will report on program issues, congressional activities and other topics of interest to the field of maternal and child health. The meeting will be closed to the public on November 20, at 10 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C. Code, and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92-463.

Anyone requiring information regarding the subject Council should contact Gontran Lamberty, Dr. Ph. H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, room 9-12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-2190.

Agenda Items are subject to change as priorities dictate.

Dated: October 3, 1991.

Jackie E. Baum,
Advisory Committee Management Officer, HRSA.

[FR Doc. 91-24279 Filed 10-8-91; 8:45 am]
BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-060-01-4120-14]

Notice of Intent To Prepare an Environmental Impact Statement and Notification of Meeting on West Rocky Butte Coal Lease Application

AGENCY: Bureau of Land Management, Interior, Wyoming.

ACTION: Notice of intent to prepare an environmental impact statement (EIS) pursuant to 40 CFR 1500-1508, and notification of Public Scoping Meeting on the West Rocky Butte Coal Lease Application (WYW122586) in the Powder River Basin, Wyoming.

SUMMARY: Northwestern Resources Company (NWR) has applied for a coal lease for 390 acres (with an estimated 50 million tons of coal) in the area adjacent to the Rocky Butte Lease (WYW78633) in Campbell County, Wyoming. The BLM has determined that an EIS must be prepared to evaluate the environmental impacts of mining coal which would result from issuance of the applied for West Rocky Butte lease. Currently, there is no mining operations on the Rocky Butte lease, so a new mine start would be necessary to begin production. The area is about 10 miles southeast of the city of Gillette, Wyoming.

DATES: As part of the scoping process, a public meeting has been scheduled for Tuesday, October 22, 1991, in the Holiday Inn, Gillette, Wyoming, beginning at 7 p.m. m.d.t. In order to ensure that comments will be considered in the draft EIS, they should

be received by c.o.b. November 1, 1991, at the address listed below.

ADDRESSES: Questions or concerns should be addressed to Mr. Jim Melton, BLM Casper District Office, 1701 East E Street, Casper, Wyoming 82601.

FOR FURTHER INFORMATION CONTACT: Jim Melton or Mike Karbs, phone (307) 261–7600, or at the above address.

SUPPLEMENTARY INFORMATION: The coal application will be processed under 43 CFR 3425. In order for the West Rocky Butte tract to be mined, it would have to be combined with the existing Rocky Butte Lease, into a Logical Mining Unit (LMU), and the entire area be permitted as a new mine. The Office of Surface Mining has been identified as a cooperating agency in the preparation of the EIS.

The major issues, identified by BLM to date, revolve around air quality, hydrology, reclamation, and socioeconomics as they relate to a new mine start. If other issues or concerns are known, they should be brought to the attention of the individuals identified above, or expressed at the scoping meeting.

Dated: October 3, 1991.

Robert A. Bennett,

Acting State Director.

[FR Doc. 91–24303 Filed 10–8–91; 8:45 am]

BILLING CODE 4310–22–M

[NM–920–4111–16]

Yates Energy Corp.; Dark Canyon Special Management Area, NM; Environmental Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and conduct public scoping.

SUMMARY: The Bureau of Land Management proposes to conduct scoping and prepare an EIS on the Yates Energy Corporation's Application for Permit to Drill (APD) the Yates Diamondback Federal No. 1 well. The proposed location for the well is in the BLM designated Dark Canyon Special Management Area (SMA) and is near the northern boundary of Carlsbad Caverns National Park. In addition, the proposed well location is in the vicinity of Lechuguilla Cave.

DATES: Scoping packets will be distributed by mail on October 11, 1991. Responses and comments to this scoping notice will be accepted through November 12, 1991. A public scoping meeting will be held on October 29, 1991, 7 p.m., at Motel Stevens, 1829 South Canal, Carlsbad, New Mexico.

ADDRESSES: Information and scoping packets for the proposed gas well can be obtained by writing, calling, or visiting the following office: Bureau of Land Management, New Mexico State Office, NM (922), Attention: Joe Incardine, P.O. Box 1449, Santa Fe, New Mexico 87504, (505) 988–6024 or FTS 476–6024.

FOR FURTHER INFORMATION CONTACT: Joe Incardine, EIS Team Leader at the address above..

SUPPLEMENTARY INFORMATION: The EIS will analyze the impacts of approving or denying the APD submitted by the Yates Energy Corporation for the Diamondback Federal No. 1 gas well. The proposed well location is in T. 24 S., R. 24 E., section 19, NESE1/4, NMPM, Eddy County, New Mexico. In addition, the EIS will analyze the impacts of a reasonable foreseeable development scenario for the oil and gas field in which the proposed well location lies. Preliminary indications are that the EIS will, at a minimum, analyze the impacts of potential oil and gas development in the Dark Canyon SMA. A larger area may be considered depending on the results of scoping and the results of the reasonable foreseeable development scenario. Among the alternatives addressed in the EIS will be options for drilling the well in other locations or using drilling processes other than those proposed by Yates Energy in the APD. Issues and concerns identified to date include:

—Potential impacts to the Dark Canyon SMA.
—Potential impacts to Lechuguilla Cave from the drilling of the well.
—Potential impacts of full-field development in the area of the proposed well.

The public is encouraged to present their ideas and views on these and other issues and concerns by returning their comments on the scoping package. Issues and concerns received during the scoping process will be considered in preparing the EIS.

Dated: October 2, 1991.

Larry L. Woodard,

State Director

[FR Doc. 91–24269 Filed 10–8–91; 8:45 am]

BILLING CODE 4310–FB–M

[MT–920–01–4111–11; MTM 20545]

Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease MTM 20545, Powder River County, Montana, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16-⅔% respectively. Payment of a $500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease,effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this notice.

Dated: September 20, 1991.

June A. Bailey,

Chief, Leasing Unit.

[FR Doc. 91–24241 Filed 10–8–91; 8:45 am]

BILLING CODE 4310–DN–M

[WAOR 45733; OR–130–02–4212–13; GP2–004]

Amendment of Realty Action: Exchange of Public Lands in Ferry, Lincoln, Pend Oreille, and Stevens Counties, Washington

AGENCY: Bureau of Land Management, Interior.

SUMMARY: This notice amends the Realty Action published in Vol. 55, page 2,155 of the **Federal Register** on January 22, 1990, to include the following public lands proposed for disposal by exchange:

Willamette Meridian

T. 36 N., R. 32 E.,
Sec. 11, M.S. 503 and M.S. 575.

Aggregating 26.25 acres in Ferry County, Washington.

The original notice is also amended to include the following described lands proposed for acquisition:

T. 22 N., R. 33 E.,
Sec. 3, All;
Sec. 7, E½, E½W½;
Sec. 9, N½, SW¼, W½SE¼, NE¼SE¼;
Sec. 10, NE¼NW¼ lying north of County Road #2456, W½NW¼.
T. 23 N., R. 33 E.,
Sec. 23, SE¼;
Sec. 24, SW¼;
Sec. 25, W½;
Sec. 26, All;
Sec. 27, All;
Sec. 33, All;
Sec. 34, E½, SW¼NW¼, SW¼.
T. 23 N., R. 34 E.,
Sec. 4, Portion of E½ lying east of County Road #2813;

Sec. 9, Portion of NE¼ lying north and east of County Road #9240;
Sec. 10, E½, NW¼ lying north and east of County Road #9240.
T. 21 N., R. 35 E.,
Sec. 13, SE¼;
Sec. 14, Portion of NW¼ lying west of County Road #2261, S½;
Sec. 15, All;
Sec. 22, All;
Sec. 23, N½NE¼, Portion of S½NE¼ lying west of County Road #2261, E½SE¼ NE¼, W½, W½W½SE¼;
Sec. 24, All;
Sec. 25, S½S½NW¼, SW¼;
Sec. 26, W½W½NE¼, SE¼SW¼NE¼, S½SE¼NE¼, NW¼, E½NW¼SE¼, E½SE¼;
Sec. 35, N½.
T. 22 N., R. 35 E.,
Sec. 13, S½;
Sec. 24, N½NW¼NE¼, SW¼NW¼NE¼, N½NW¼, SW¼NW¼, NW¼SE¼ NW¼.
T. 21 N., R. 36 E.,
Sec. 13, SE¼;
Sec. 14, S½NW¼, SW¼;
Sec. 17, NE¼, S½;
Sec. 18, S½NW¼, SW¼, S½SE¼;
Sec. 19, Portion of NE¼NE¼;
Sec. 23, All;
Sec. 24, Portion of NE¼, NW¼, S½;
Sec. 25, N½, SE¼.
T. 21 N., R. 37 E.,
Sec. 19, S½S½NW¼ lying west of County Road #3019, S½ lying west of County Road #3019;
Sec. 30, N½ lying south of County Road #3019, SW¼, W½W½SE¼.

Aggregating 13,200 acres more or less in Lincoln County, Washington.

Date of Issue: October 1, 1991.

Joseph K. Buesing,

District Manager.

[FR Doc. 91-24285 Filed 10-8-91; 8:45 am]

BILLING CODE 4310-33-M

[OR-942-00-4730-12: GP1-370]

Filing of Plats of Survey: Oregon/ Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 15 S., R. 6 W., accepted August 9, 1991 (Sheets 1 & 2)
T. 30 S., R. 6 W., accepted August 12, 1991
T. 4 S., R. 11 E., accepted July 31, 1991
T. 18 S., R. 31 E., accepted August 26, 1991
T. 19 S., R. 31 E., accepted August 26, 1991 (Sheets 1 & 2)
T. 19 S., R. 32 E., accepted August 26, 1991 (Sheets 1 & 2)

Washington

T. 27 N., R. 19 E., accepted August 16, 1991 (Sheets 1, 2, & 3)

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 NE. 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above ofice upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT; Bureau of Land Management, 1300 NE. 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: September 17, 1991.

Robert E. Mollohan,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 91-24288 Filed 10-8-91; 8:45 am]

BILLING CODE 4310-33-M

[NM-930-4214-10; NMNM 55234]

Notice To Proceed, Waste Isolation Pilot Plant Project (WIPP), New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Public Land Order No. 6826 modified Public Land Order No. 6403 to: (1) Expand the purpose to include conducting the test phase of the project; (2) increase the Department of Energy's (DOE) exclusive use area to 1,453.9 acres; (3) extend the term of the withdrawal through June 29, 1997; and (4) delete paragraph 5 of PLO 6403 which prohibited the use of the land for the transportation, storage, or burial of radioactive materials, with the proviso that no transuranic or other forms of radioactive waste will be transported to or emplaced at the WIPP site until such time as the DOE has obtained all required permits and provided copies to the Department of the Interior (DOI), Bureau of Land Management, or certifies that all environmental permitting requirements have been met, and the DOI issues a Notice to Proceed to be published in the **Federal Register**. The DOE has certified that it has met all permitting requirements as stipulated in the aforementioned proviso, and, accordingly, the DOI has issued its Notice to Proceed by letter addressed to the Secretary of Energy, a copy of which is reproduced in appendix A.

EFFECTIVE DATE: October 9, 1991.

FOR FURTHER INFORMATION CONTACT: Clarence Hougland, BLM New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87504-1449, 505-988-6071.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of Public Land Order No. 6826, published in the **Federal Register** on January 28, 1991, 56 FR 3038, the DOE has certified that all permitting requirements have been met. A copy of the text of a letter sent to the DOE constituting the Notice to Proceed is appended herewith as appendix A.

Dated: October 3, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

Appendix A

Honorable James D. Watkins,
Secretary of Energy,
Washington, DC 20585.

October 3, 1991.

Dear Mr. Secretary:

Public Land Order (PLO) No. 6826, published in the **Federal Register** on January 28, 1991 (56 FR 3038), modified PLO 6403, the land withdrawal for the Waste Isolation Pilot Plant (WIPP) project in New Mexico. This modification: (1) Expanded the purpose to include conducting the test phase of the project; (2) increased the Department of Energy's (DOE) exclusive use area to 1,453.9 acres; (3) extended the term of the withdrawal through June 29, 1997; and (4) deleted paragraph 5 of PLO 6403 which prohibited the use of the land for the transportation, storage, or burial of radioactive materials. The PLO 6826 contained the proviso that no transuranic or other forms of radioactive waste will be transported to or emplaced at the WIPP site until such time as the DOE has obtained all required permits and provided copies to the Department of the Interior, Bureau of Land Management (BLM), or certifies that all environmental permitting requirements have been met, and the BLM issues a Notice to Proceed to be published in the **Federal**

Register. These requirements include (1) the Environmental Protection Agency's (EPA) No Migration Variance; (2) the notice to the EPA for compliance with the National Emission Standards for Hazardous Air Pollutants; and (3) Part A of the Resource Conservation and Recovery Act permit application.

The DOE has certified that all permitting requirements have been met; therefore, in accordance with the provision of PLO 6826, you are hereby notified that the DOE may proceed to transport to or emplace radioactive waste at the WIPP site. This Notice to Proceed will become effective upon the date that a copy of it is printed and published in the Federal Register.

Sincerely,

Dave O'Neal,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 91-24266 Filed 10-8-91; 8:45 am]

BILLING CODE 4310-FB-M

[NM-930-4214-10; NMNM 55234]

Modification Proposal, Waste Isolation Pilot Plant (WIPP) Project, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: A proposal was made to modify Public Land Order No. 6826 for the purpose of prohibiting, until June 30, 1991, the transportation or emplacement, for test purposes, of any radioactive nuclear waste material within the WIPP site near Carlsbad, New Mexico. For the reasons stated herein, Public Land Order No. 6826 is not being modified.

FOR FURTHER INFORMATION CONTACT: Clarence Hougland, BLM New Mexico State Office, P.O. Box 1449, Santa Fe, New Mexico 87504-1449, 505-988-6071.

SUPPLEMENTARY INFORMATION: As required by the regulations at 43 CFR 2310.3-1(b)(1), a Notice of Proposed Modification of Public Land Order No. 6826 was published in the Federal Register on April 1, 1991 (56 FR 13335). The proposed modification had as its purpose delaying the transportation or emplacement, for test purposes, of any radioactive nuclear waste material within the WIPP site near Carlsbad, New Mexico, until June 30, 1991. The delay was intended to accommodate concerns of the House Committee on Interior and Insular Affairs about environmental, public health and safety matters and to afford additional time for the Congress to enact legislation authorizing the disposition of waste, for test purposes, within the WIPP. As required by the regulations at 43 CFR 2310.3-1(b)(2)(v), a Notice of Proposed Meeting and Request for Comments in connection with the proposed modification was published in the Federal Register on May 24, 1991 (56 FR 23933), and a public meeting concerning the proposal was held on June 28, 1991, in Carlsbad, New Mexico. Comments from the meeting, for the most part, supported the implementation of the test phase of the WIPP, as set forth in Public Land Order No. 6826, which became effective on January 28, 1991. Some comments were critical as to what were thought to be possible adverse effects of the disposition of waste at the WIPP site. These concerns have been addressed extensively in the environmental documentation pertaining to the WIPP project. In view of the foregoing, Public Land Order No. 6826 is not being modified.

Dated: October 3, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91-24265 Filed 10-8-91; 8:45 am]

BILLING CODE 4310-FB-M

[AK-932-4214-10; A-060160, AA-502]

Termination of Temporary Segregative Effect and Opening of Lands; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates the temporary segregative effect of two proposed withdrawals on approximately 96.98 acres of public lands included in the U.S. Army Corps of Engineers' and the Alaska Power Administration's withdrawal applications for protection of hydroelectric projects.

EFFECTIVE DATE: October 21, 1991.

FOR FURTHER INFORMATION CONTACT: Sandra C. Thomas, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

SUPPLEMENTARY INFORMATION: Pursuant to the regulation contained in 43 CFR 2310.2-1(e), the lands described in the withdrawal applications listed below will be relieved of their temporary segregative effect at 9 a.m. on October 31, 1991:

1. A-060160—Snettisham Hydroelectric Project, published May 6, 1977, 42 FR 23210, for U.S. Army Corps of Engineers.

2. AA-502—Eklutna Hydroelectric Project, published March 8, 1967, 32 FR 3839 and May 17, 1977, 42 FR 25384, for Alaska Power Administration. The original proposed withdrawal contained 80 acres, but 40 acres were conveyed out of Federal ownership on September 30, 1986. The remaining 40 acres in the withdrawal application is described below:

Seward Meridian

T. 15 N., R. 2 E.

Sec. 7, E½SE¼NE¼, E½NE¼SE¼.

3. The withdrawal applications will continue to be processed unless they are canceled or denied.

Sue A. Wolf,

Chief, Branch of Land Resources.

[FR Doc. 91-24259 Filed 10-8-91; 8:45 am]

BILLING CODE 4310-JA-M

National Park Service

Great Basin National Park; Availability of Draft General Management Plan and Environmental Impact Statement

SUMMARY: In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, Public Law 91-190, and National Park Service (NPS) planning guidelines, the NPS has prepared a Draft General Management Plan/Environmental Impact Statement (GMP/EIS) for Great Basin National Park, established in 1986. A proposal and three alternatives for future management and use of the park are described and analyzed. The proposal would provide a diversity of visitor opportunities by expanding interpretation, improving access to and within the park, construction of a new visitor center, adding new camping and trail facilities, and moving administrative support facilities outside the park. Alternatives include: (A) Minimal improvements and no relocation of support facilities; (B) maximizing natural resource protection with concentration and restriction of visitor facilities and relocation of support facilities; and (C) providing more extensive visitor development and accessibility to the park with support facilities remaining in the park.

Comments on the draft GMP/EIS should be received no later than December 31, 1991, and should be addressed to: Superintendent, Great Basin National Park, Baker, NV 89311. Requests for additional information and/or copies of the draft GMP/EIS should be directed to this address or telephone number (702) 234-7331. In addition, comments will be received at the following public meetings:

11/18/91, 7 p.m. Reno, NV, Holiday Inn, 1000 E. 6th St.

11/19/91, 7 p.m. Ely, NV, Bristlecone Convention Center, 150 6th St.

11/20/91, 7 p.m. Baker, NV, Baker Hall.

11/21/91, 7 p.m. Salt Lake City, UT, Utah Dept. of Natural Resources Auditorium, 1636 North Temple.

Copies of the draft GMP/EIS are available at the park headquarters and

at the following libraries: Lincoln and White Pine county libraries, NV; Beaver and Millard county libraries, UT; Harold E. Lee Library, Brigham Young University; and Southern Utah University Library. Copies also are available for inspection at the following address: Western Regional Office, National Park Service, Division of Planning, Grants and Environmental Quality, 600 Harrison St., Suite 600, San Francisco, CA 94107–1372.

Dated: September 25, 1991.

Lewis Albert,

Acting Regional Director, Western Region.

[FR Doc. 91–24277 Filed 10–8–91; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 24, 1991 Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by October 24, 1991.

Carol D. Shull,

Chief of Registration, National Register.

MASSACHUSETTS

Hampden County

Granville Center Historic District, Main Rd. Granville, 91001587

Granville Village Historic District, Roughly, area around jct. of Maple St. and Main and Ganby Rds., including part of Water St., Granville, 91001588

West Granville Historic District, Roughly, Main Rd. from W of Beach Hill Rd. to South Ln. No. 2, Granville, 91001589

MISSISSIPPI

Tishomingo County

Central Iuka Historic District (Iuka MPS), Roughly, Fulton and Main Sts. from Easport St. to Southern Railway tracks and Front St. from Pearly to Fulton Sts., Iuka, 91001577

NORTH DAKOTA

Grand Forks County

Blome, R.S., Granitoid Pavement in Grand Forks, Roughly, Lewis Blvd. S of Conklin Ave. and area around jcts. of Walnut St. and 3rd Ave. and Minnesota Ave. and 5th St., Grand forks, 91001583

OHIO

Montgomery County

Holy Cross Lithuanian Roman Catholic Church [European Ethnic Communities, Dayton MPS], 1924 Leo St., Dayton, 91001582

St. Adalbert Polish Catholic Church [European Ethnic Communities, Dayton MPS], 1511 Valley St., Dayton 91001581

TENNESSEE

Claiborne County

Graham-Kivette House (Boundary Decrease), Jct. of Old Knoxville Rd. and Main St., Tazewell, 91001578

Marion County

Cumberland Avenue Bridge (Cement Construction in Richard City MPS), Cumberland Ave. over Popular Springs Branch Cr., South Pittsburg, 91001584

Shelby County

Graceland, 3764 Elvis Presley Blvd., Memphis, 91001585

White County

Sparta Residential Historic District, Roughly bounded by N. Main, College, Everett and Church Sts., Sparta, 91001586

VIRGINIA

Albermarle County

The Rectory, Jct. of VA 712 and VA 713, Keene vicinity, 91001579

Pulaski County

Pulaski South Historic Residential and Industrial District, Roughly bounded by Bertha St., Commerce St., Pierce Ave., 5th St. and Pulaski St., Pulaski, 91001580

[FR Doc. 91–24278 Filed 10–8–91; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–324]

Certain Acid-Washed Denim Garments and Accessories; Decision Not To Review an Initial Determination Terminating the Investigation as to One Respondent on the Basis of a Consent Order

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) (Order No. 19) granting a joint motion to terminate the investigation as to respondent Bugle Boy Industries, Inc., on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: William T. Kane, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436; telephone (202)–205–3116. Copies of the ID, consent order, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436; telephone (202)–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202)–205–1810.

SUPPLEMENTARY INFORMATION: On January 2, 1991, Greater Texas Finishing Corporation and Golden Trade S.r.L. filed a complaint alleging a violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation, sale for importation, or sale after importation of acid-washed denim products by reason of infringement of claims 6 and 14 of U.S. Letters Patent 4,740,213 (the '213 patent). The Commission voted to institute an investigation of the complaint on January 28, 1991, and published notice of institution of the investigation in the **Federal Register**. 56 FR 4851 (Feb. 6, 1991).

On August 6, 1991, complainants and respondent Bugle Boy moved jointly pursuant to interim rule § 210.51 to terminate the investigation as to Bugle Boy on the basis of a consent order and consent order agreement (Motion Docket No. 324–27). The Commission investigative attorney filed a response in support of the joint motion. On September 3, 1991, the presiding administrative law judge issued an ID granting the motion (ALJ Order No. 19). Notice of the ID was published in the **Federal Register** on September 11, 1991. 56 FR 46327. No petitions for review or agency or public comments were received.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rules §§ 210.53 and 211.21 (19 CFR 210.53 and 211.21, as amended).

Issued: September 30, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–24297 Filed 10–8–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation 337-TA-328]

Certain Bathtubs and Other Bathing Vessels and Materials Used Therein; Receipt of Initial Determination Terminating Respondents on the Basis of Consent Order Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding officer in the above captioned investigation terminating the following respondents on the basis of a consent order agreement: EBI Ltd.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on September 30, 1991.

Copies of the initial determination, the consent order agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, telephone (202) 205–1802.

Issued: September 30, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–24294 Filed 10–8–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 701-TA-254 (Final)]

Certain Red Raspberries From Canada

AGENCY: United States International Trade Commission.

ACTION: Continuation and termination of final countervailing duty investigation No. 701–TA–254 (Final) concerning red raspberries from Canada.

SUMMARY: The Department of Commerce published notice in the **Federal Register** on September 20, 1991 (56 FR 47740), that the suspension agreement concerning certain red raspberries from Canada (which was published in the **Federal Register** on January 9, 1986 (51 FR 1005)) had been cancelled because the Government of Canada withdrew from the suspension agreement. As a consequence, Commerce continued its countervailing duty investigation as if its affirmative preliminary determination were made on the date of the publication of its notice to resume the investigation. Similarly, pursuant to section 704(g) of the Tariff Act of 1930 (19 U.S.C. 1671c(g)), the Commission also continued its investigation.

On September 25, 1991, the Commission and Commerce received a letter from petitioners in the investigation withdrawing their petition. Accordingly, pursuant to § 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)), the countervailing duty investigation concerning certain red raspberries from Canada (investigation No. 701–TA–254 (Final)) is terminated.

EFFECTIVE DATE: September 25, 1991.

FOR FURTHER INFORMATION CONTACT: Brad Hudgens (202–205–3189), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Authority: This investigation is being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.40 of the Commission's rules (19 CFR 207.40).

Issued: October 2, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91–24295 Filed 10–8–91; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731-TA-514 (Final)]

Shop Towels From Bangladesh

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–514 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reasons of imports from Bangladesh of shop towels,[1] provided for in subheading 6307.10.20 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201, as amended by 56 FR 11918, Mar. 21, 1991), and part 207, subparts A and C (19 CFR part 207, as amended by 56 FR 11918, Mar. 21, 1991).

EFFECTIVE DATE: September 12, 1991.

FOR FURTHER INFORMATION CONTACT: Douglas E. Corkran (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background.—This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of shop towels from Bangladesh are being sold in the United States at

[1] For purposes of this investigation, shop towels are defined as absorbent industrial wiping cloths made from a loosely woven fabric. The fabric may be either 100 percent cotton or a blend of materials.

less than fair value within the meaning of section 733 of the act (19 U.S.C. 1673b). The investigation was requested in a petition filed on March 29, 1991, by Milliken and Company, LaGrange, Georgia.

Participation in the investigation and public service list.—Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in this investigation will be placed in the nonpublic record on January 17, 1992, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on January 30, 1992, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 22, 1992. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 27, 1992, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules.

Written submissions.—Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is January 27, 1992. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is February 7, 1992; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before February 7, 1992. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: October 1, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-24296 Filed 10-8-91; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-321]

Certain Soft Drinks and Their Containers; Decision Not To Review an Initial Determination Terminating the Investigation as Three Respondents on the Basis of a Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Commission has determined not to review the presiding administrative law judge's (ALJ's) initial determination (ID) (Order No. 8) granting a joint motion to terminate the investigation as to respondents International Grain Trade, Inc., Colgran Ltda., and MA Universe Trading Corp. on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Stephen A. McLaughlin, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436; telephone (202) 205-3095. Copies of the ID, consent order, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436; telephone (202) 205-2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205-1810.

SUPPLEMENTARY INFORMATION: On November 23, 1990, Kola Colombiana (Kola) filed a complaint with the Commission alleging violations of section 337 of the Tariff Act of 1930 as amended (19 U.S.C. 1337) in the importation into the United States, the sale of importation, or the sale within the United States after importation, of certain soft drinks and their containers. The complaint, as amended, alleged false representation of origin, common law trademark infringement, and misappropriation of trade dress.

The Commission instituted an investigation into the allegations of Kola's complaint and published a notice of investigation in the **Federal Register** 55 FR 5325 (December 27, 1990). The notice named International Grain Trade, Inc. of New York, New York, Universe Trading Corp. of Miami, Florida, Corbros Food Corp., of Corona, New York, and Colgran Ltda. of Bogota, Colombia, as respondents. Corbros failed to appear or participate in the investigation and has been found in default.

On June 13, 1991, complainant and Universe Trading Corp., International Grain Trade, Inc., and Colgran Ltda. moved jointly pursuant to interim rule § 210.51 to terminate the investigation as to those respondents on the basis of a consent order and consent order agreements (Motion Docket No. 321-7 and Motion Docket 321-8). The Commission investigative attorney supported the motions contingent upon the parties amending the agreements to limit them to "imported" soft drink products or their containers. The parties subsequently agreed to the limitation. On September 3, 1991, the presiding administrative law judge issued an ID granting the motion (ALJ Order No. 8).

Notice of the ID was published in the Federal Register on September 11, 1991. 56 FR 46327. No petitions for review of the ID, or agency or public comments were filed.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rules §§ 210.53 and 211.21 (19 CFR 210.53 and 211.21, as amended).

Issued: September 30, 1991.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 91-24293 Filed 10-8-91; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-55 (Sub. 397X)]

CSX Transportation, Inc.—Abandonment Exemption—in Vinton and Gallia Counties, OH

Applicant has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon its 28.15-mile line of railroad between milepost 90.85, at Minerton, and milepost 119.00, at Kanauga Junction, in Vinton and Gallia Counties, OH.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on November 8, 1991 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues [1] formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by October 21, 1991.[3] Petitions for reconsideration or requests for public use conditions under 49 CFR 1152.28 must be filed by October 29, 1991, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Karen Anne Koster, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by October 11, 1991. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: September 25, 1991.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 91-24289 Filed 10-8-91; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu, on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Lewis B. Arnold, on (202) 514-4305.

If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis B. Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

This notice contains three collections for which an expedited review has been requested from the Office of Management and Budget (INS Forms I-131, I-539, and I-485). In an effort to fully inform the reporting public, these entries are printed in full, including instructions, at the end of this notice. Written comments concerning these

three forms should be sent to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street NW., Room 5304, Washington, DC 20536, Attention: Form _____, within 15 days after the date of this notice in the **Federal Register**.

Revision of Currently Approved Collections

(1) Application to Waive Exclusion Grounds.
(2) I–724, Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. This form is used by aliens to apply to waive excludability from the U.S. pursuant to provisions as amended by section 601 of the Immigration Act of 1990, Public Law 101–649. This new form replaces the current I–191, I–192, I–193, I–212, I–601, I–602, and I–612 now used to apply for various waivers.
(5) 76,000 annual respondents at 82 hours per response.
(6) 62,320 annual burden hours.
(7) Not applicable under 3504(h).

An Expedited Review Has Been Requested For I–539 and I–131

(1) Application for Travel Document.
(2) I–131, Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. This form is for a nonimmigrant to apply for an extension of stay or change to another nonimmigrant status.
(5) 222,000 annual respondents at .75 hours per response.
(6) 166,500 annual burden hours.
(7) Not applicable under 3504(h).

(1) Application for Travel Document.
(2) I–131, Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. This form is used in applying for a reentry permit, refugee travel document, or advance parole document. The data collected on this form will be used by the Service to determine eligibility for the requested immigration benefit.
(5) 142,000 annual respondents at .90 hours per response.
(6) 127,800 annual burden hours.
(7) Not applicable under 3504(h).

Extension of the Expiration Date of Currently Approved Collections Without Any Change in the Substance or in the Method of Collection

(1) Revalidation Letter (Immigration Visa Petition).
(2) I–71, Immigration and Naturalization Service.
(3) On occasion.
(4) Businesses or other for-profit. Used to determine if petition should be revalidated on behalf of an alien to be employed by petitioner.
(5) 7,000 annual respondents at .033 hours per response.
(6) 231 annual burden hours.
(7) Not applicable under 3504(h).

(1) Affidavit of Witness.
(2) I–488, Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. This form is used in various Service proceedings such as in the creation of a record of lawful permanent residence under section 249 of the Act, suspension of deportation and voluntary departure.
(5) 2,000 annual respondents at .166 hours per response.
(6) 332 annual burden hours.
(7) Not applicable under 3504(h).

(1) Notice to Student or Exchange Visitor.
(2) I–515, Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. This form is used to notify students or exchange visitors admitted to the U.S. as nonimmigrants that they are admitted without required forms and that they have 30 days to present the required forms to the appropriate office.
(5) 3,000 annual respondents at .083 hours per response.
(6) 249 annual burden hours.
(7) Not applicable under 3504(h).

(1) Application for Nonresident Alien's Mexican Border Crossing Card.
(2) I–190, Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Used to obtain data from an application for a Mexican Border Crossing Card, Form I–186/I–586. The data is used by INS to determine eligibility of applicant.
(5) 230,000 annual respondents at .083 hours per response.
(6) 19,090 annual burden hours.
(7) Not applicable under 3504(h).

(1) Application for Transfer of Petition for Naturalization.
(2) N–455, Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. Used by applicant for naturalization to request transfer of petition to another court; used by INS to make recommendations to the court.
(5) 100 annual respondents at .166 hours per response.
(6) 17 annual burden hours.
(7) Not applicable under 3504(h).

New Collection

An Expedited Review Has Been Requested For This Entry

(1) Application to Register Permanent Residence or Adjust Status.
(2) I–485, Immigration and Naturalization Service.
(3) On occasion.
(4) Individuals or households. This application and information will be used to request and determine eligibility for adjustment to permanent resident status or other granting of permanent residence to an alien already in the United States.
(5) 192,000 annual respondents at 4.5 hours per response and 100,000 at 5.25 hours per response.
(6) 939,000 annual burden hours.
(7) Not applicable under 3504(h).

Special Note Regarding Impact on Fee

I–539: The proposed I–539 merges several different applications, and allows co-applicants in many instances where separate applications were previously required. The various processes now have separate fees. However, one of the goals of the forms consolidation project is simplification. This means that, to the extent possible, there should be a single fee for an application. However, the diverse nature of the processes that have been merged would make it very difficult to create one average fee. Even so, a complex fee schedule would also be unworkable. To accommodate these needs, the fees for the separate processes would be implemented in the new application by establishing a fee of $70 for the first applicant and an additional fee of $50 for each co-applicant.

Public comment on these items is encouraged.

Dated: October 2, 1991.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

DRAFT

OMB No. 1115–

Application to Extend/Change Nonimmigrant Status

Purpose of This Form

This form is for a nonimmigrant to apply for an extension of stay or change to another nonimmigrant status. However, an employer should file Form 1–129 to request an extension/change to E, H, L, O, P, Q, or R status for an employee or prospective employee. Dependents of such employees should file for an extension/change of status on this form, not on Form 1–129. This form

is also for a nonimmigrant F–1 or M–1 student to apply for reinstatement.

This form consists of a basic application and a supplement to list co-applicants.

Who May File

For extension of stay or change of status. If you are a nonimmigrant in the U.S., you may apply for an extension of stay or a change of status on this form except as noted above. However, you may not be granted an extension or change of status if you were admitted under the Visa Waiver Program or if your current or proposed status is as:

- An alien in transit (C) or in transit without a visa (TWOV);
- A crewman (D); or
- A fiance(e) or dependent of a finance(e) (K).

There are additional limits on change of status.

- A J–1 exchange visitor whose status was for the purpose of receiving graduate medical training is ineligible for change of status.
- A J–1 exchange visitor subject to the foreign residence requirement who has not received a waiver of that requirement, is only eligible for a change of status to A or G.
- An M–1 student is not eligible for a change to F–1 status, and is not eligible for a change to any H status if training, received as an M–1 student helped him/her qualify for the H status.
- You may not be granted a change to M–1 status for training to qualify for H status.

For F–1 or M–1 student reinstatement. You will only be considered for reinstatement if you establish when filing this application:

- That the violation of status was solely due to circumstances beyond your control or that failure to reinstate you would result in extreme hardship;
- You are pursuing, or will pursue, a full course of study;
- You have not been employed off campus without authorization or, if an F–1 student, that your only unauthorized off-campus employment was pursuant to a scholarship, fellowship, or assistantship, or did not displace a U.S. resident, and
- You are not in deportation proceedings.

Multiple Applicants

Spouses and children under 21 who are in, or are requesting, the same or derivative status may be included in one application for extension of stay/change of status or student reinstatement.

General Filing instructions

Please answer all questions by typing or clearly printing in black ink. Indicate that an item is not applicable with "N/A". If the answer is "none," please so state. If you need extra space to answer any item, attach a sheet of parer with your name and your alien registration number (A#), if any, and indicate the number of the item to which the answer refers. Your application must be filed with the required Initial Evidence. Your application must be properly signed and filed with the correct fee. If you are under 14 years of age, your parent or guardian may sign your application.

Copies. If these instructions state that a copy of a document may be filed with this application and you choose to send us the original, we may keep that original for our records.

Translations. Any foreign language document must be accompanied by a full English translation which the translator has certified as complete and correct, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Initial Evidence

Form I–94, Nonimmigrant Arrival-Departure Record. An application must be accompanied by the original Form I–94, Nonimmigrant Arrival/Departure Record, of each person included in the application, if you are filing for:

- An extension as a B–1 or B–2, or change to such status;
- Rinstatement as an F–1 or M–1 or filing for change to F or M status; or
- An extension as a J, or change to such status.

In all other instances, file this application with a copy of the Form I–94 of each person included in the application.

If the required Form I–94 or required copy cannot be submitted, you must file Form I–102, Application for Replacement/Initial Nonimmigrant Arrival/Departure Document, with this application.

Valid Passport. A nonimmigrant who is required to have a passport to be admitted must keep that passport valid during his/her entire nonimmigrant stay. If a required passport is not valid when you file this application, submit an explanation with your application.

Addition Initial Evidence. An application must also be filed with the following evidence.

- If you are filing for an extension/change of status as the dependent of an employee who is an E, H, L, O, P, Q or R nonimmigrant, this application must be filed with:
- The petition filed for that employee or evidence it is pending with the Service; or
- A copy of the employee's Form I–94 or approval notice showing that he/she has already been granted status to the period requested in your application.
- If you requesting an extension/change to A–3 or G–5 status, this application must be filed with:
- A copy of your employer's Form I–94 or approval notice demonstrating A or G status;
- An original letter from your employer describing your duties and stating that he/she intends to personally employ you; and
- An original Form I–566, certified by the Department of State, indicating your employer's continuing accredited diplomatic status.
- If you are filing for an extension/change to other A or G status, you must submit Form I–566, certified by the Department of State to indicate your accredited diplomatic status.
- If you are filing for an extension/change to B–1 or B–2 status, this application must be filed with a statement explaining, in detail;
- The reasons for your request;

Why your extended stay would be temporary including what arrangement you have made to depart the U.S.; AND

- Any effect to the extended stay on your foreign employment and residency.
- If you are requesting an extension/change to F–1 or M–1 student status, this application must be filed with an original Form I–20 issued by the school which has accepted you. If you are requesting reinstatement to F–1 or M–1 status, you must also submit evidence establishing that you are eligible for reinstatement.
- If you are filing for an extension/change to I status, this application must be filed with a letter describing the employment and establishing that it is as the representative of qualifying foreign media.
- If you are filing for an extension/change to J–1 exchange visitor status, this application must be filed with an original Form IAP–66 issued by your program sponsor.
- If you are filing for an extension/change to N–1 or N–2 status as the parent or child of an alien admitted as a special immigrant under section 101(a)(27)(I), this application must be filed with a copy of that person's alien registration card.

When To File

You must submit an application for extension of stay or change of status before your current authorized stay

expires. We suggest you file at least 45 days before your stay expires, or as soon as you determine you need to change status. Failure to file before the expiration date may be excused if you demonstrate when you file the application;

- The delay was due to extraordinary circumstances beyond your control;
- The length of the delay was reasonable;
- That you have not otherwise violated your status;
- That you are still a bona fide nonimmigrant; and
- That you are not in deportation proceedings.

Where To File

File this application at your local INS office if you are filing:

- For an extension as a B–1 or B–2, or change to such status;
- For reinstatement as an F–1 or M–1 or filing for change to F or M status; or
- For an extension as a J, or change to such status.

In all other instances, file your application at an INS Service Center, as follows:

If you live in Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virgin Islands, Virginia, or West Virginia, mail your application to: USINS Eastern Service Center, 75 Lower Welden Street, St. Albans, VT 05479–0001.

If you live in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, or Texas, mail your application to: USINS Southern Service Center, P.O. Box 152122, Dept. A, Irving, TX 75015–2122.

If you live in Arizona, California, Guam, Hawaii, or Nevada, mail your application to: USINS Western Service Center, P.O. Box 30040, Laguna Niguel, CA 92607–0040.

If you live elsewhere in the United States, mail your application to: USINS Northern Services Center, 100 Centennial Mail North, Room, B–26, Lincoln, NE 68508.

Fee

The fee for this application is $70.00 for the first person included in the application, and $50.00 for each additional person. The fee must be submitted in the exact amount. It cannot be refunded. DO NOT MAIL CASH.

All checks and money orders must be drawn on a bank or other institution located in the United States and must be payable in United States currency. The check or money order should be made payable to the Immigration and Naturalization Service, except that:

- If you live in Guam, and are filing this application in Guam, make your check or money order payable to the "Treasurer, Guam."
- If you live in the Virgin Islands, and are filing this application in the Virgin Islands, make your check or money order payable to the "Commissioner of Finance of the Virgin Islands."

Checks are accepted subject to collection. An uncollected check will render the application and any document issued invalid. A charge of $5.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn.

Processing Information

Rejection. Any application that is not signed or is not accompanied by the correct fee will be rejected with a notice that the application is deficient. You may correct the deficiency and resubmit the application. However, an application is not considered properly filed until accepted by the Service.

Initial processing. Once the application has been accepted, it will be checked for completeness. If you do not completely fill out the form, or file it without required initial evidence, you will not establish a basis for eligibility, and we may deny your application.

Requests for more information or interview. We may request more information or evidence or we may request that you appear at an INS office for an interview. We may also request that you submit the originals of any copy. We will return these originals when they are no longer required.

Decision. An application for extension of stay, change of status, or reinstatement may be approved in the discretion of the Service. You will be notified in writing of the decision on your application.

Penalties

If you knowingly and willfully falsify or conceal a material fact or submit a false document with this request, we will deny the benefit you are filing for, and may deny any other immigration benefit. In addition, you will face severe penalties provided by law, and may be subject to criminal prosecution.

Privacy Act Notice

We ask for the information on this form, and associated evidence, to determine if you have established eligibility for the immigration benefit you are filing for. Our legal right to ask for this information is in 8 USC 1184, and 1258. We may provide this information to other government agencies. Failure to provide this information, and any requested evidence, may delay a final decision or result in denial of your request.

Paperwork Reduction Act Notice

We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. The estimated average time to complete and file this application is as follows: (1) 10 minutes to learn about the law and form; (2) 10 minutes to complete the form; and (3) 25 minutes to assemble and file the application; for a total estimated average of 45 per application. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to both the Immigration and Naturalization Service, 425 I Street, NW., Room 5304, Washington, D.C. 20536; and the Office of Management and Budget, Paperwork Reduction Project, OMB No. 1115–XXXX, Washington, D.C. 20503.

Mailing Label

Complete the following mailing label and submit this page with your application if you are required to submit your original Form I–94.

Name and Address of applicant/petitioner

Name

Street

State, Zip Code

Your I–94 Arrival-Departure Record is attached. It has been amended to show the extension of stay/change of status granted.

BILLING CODE 4410–10–M

DRAFT

U.S. Department of Justice
Immigration and Naturalization Service

Application to Extend Change
Nonimmigrant Status
OMB #1115-XXXX

START HERE - Please Type or Print

Part 1. Information about you.

Family Name	Given Name	Middle Initial

Address - In Care of:

Street # and Name | Apt. #

City | State

Zip Code

Date of Birth (month/day/year)	Country of Birth
Social Security # (if any)	A# (if any)
Date of Last Arrival Into the U.S.	I-94#
Current Nonimmigrant Status	Expires on (month/day/year)

Part 2. Application Type. (See instructions for fee.)

1. **I am applying for:** (check one)
   a. ☐ an extension of stay in my current status
   b. ☐ a change of status. The new status I am requesting is: _____
2. **Number of people included in this application:** (check one)
   a. ☐ I am the only applicant
   b. ☐ Members of my family are filing this application with me. The Total number of people included in this application is _____ (complete the supplement for each co-applicant)

Part 3. Processing information.

1. I/We request that my/our current or requested status be extended until (month/day/year) _____
2. Is this application based on an extension or change of status already granted to your spouse, child or parent?
   ☐ No ☐ Yes (receipt # _____)
3. Is this application being filed based on a separate petition or application to give your spouse, child or parent an extension or change of status?
   ☐ No ☐ Yes, filed with this application ☐ Yes, filed previously and pending with INS
4. If you answered yes to question 3, give the petitioner or applicant name:

   If the application is pending with INS, also give the following information.

   Office filed at _____ Filed on _____ (date)

Part 4. Additional Information.

1. For applicant #1, provide passport information:
   Country of issuance | Valid to: (month/day/year)
2. Foreign address:
   Street # and Name | Apt#
   City or Town | State or Province
   Country | Zip or Postal Code

Form I-539 (Rev. 09/04/91) DRAFT 7

Continued on back.

FOR INS USE ONLY

Returned | Receipt
Date
Resubmitted
Date
Reloc Sent
Date
Reloc Rec'd
Date
Date
☐ Applicant Interviewed

☐ *Extension Granted* to (date): _____
☐ *Change of Status/Extension Granted*
New Class: _____ To (date): _____

If denied:
☐ Still within period of stay
☐ V/D to: _____
☐ S/D to: _____
☐ Place under docket control

Remarks

Action Block

To Be Completed by *Attorney or Representative*, if any
☐ Fill in box if G-28 is attached to represent the applicant
VOLAG#
ATTY State License #

DRAFT

Part 4. Additional Information. *(continued)*

3. Answer the following questions. If you answer yes to any question, explain on separate paper.	Yes	No
a. Are you, or any other person included in this application, an applicant for an immigrant visa or adjustment of status to permanent residence?		
b. Has an immigrant petition ever been filed for you, or for any other person included in this application?		
c. Have you, or any other person included in this application ever been arrested or convicted of any criminal offense since last entering the U.S.?		
d. Have you, or any other person included in this application done anything which violated the terms of the nonimmigrant status you now hold?		
e. Are you, or any other person included in this application, now in exclusion or deportation proceedings?		
f. Have you, or any other person included in this application, been employed in the U.S. since last admitted or granted an extension or change of status?		

If you answered YES to question 3f, give the following information on a separate paper: Name of person, name of employer, address of employer, weekly income, and whether specifically authorized by INS.

If you answered NO to question 3f, fully describe how you are supporting yourself on a separate paper. Include the source and the amount and basis for any income.

Part 5. Signature. *Read the information on penalties in the instructions before completing this section. You must file this application while in the United States.*

I certify under penalty of perjury under the laws of the United States of America that this application, and the evidence submitted with it, is all true and correct. I authorize the release of any information from my records which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking.

Signature	Print your name	Date

Please Note: *If you do not completely fill out this form, or fail to submit required documents listed in the instructions, you cannot be found eligible for the requested document and this application will have to be denied.*

Part 6. Signature of person preparing form if other than above. *(Sign below)*

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature	Print Your Name	Date

Firm Name
and Address

(Please remember to enclose the mailing label with your application)

Continued on back

Supplement-1

Attach to Form I-539/I-129 when more than one person is included in the petition or application. *(List each person separately. Do not include the person you named on the petition form).*

Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Social Security No		A#
IF IN THE U.S.	Date of Arrival *(month/day/year)*	I-94#	
	Current Nonimmigrant Status:	Expires on *(month day year)*	
Country where passport issued	Expiration Date (month/day/year)	Date Started with group (I-129 only)	

Family Name	Given Name	Middle Initial	Date of Birth (month day year)
Country of Birth	Social Security No		A#
IF IN THE U.S.	Date of Arrival *(month/day/year)*	I-94#	
	Current Nonimmigrant Status:	Expires on *(month day/year)*	
Country where passport issued	Expiration Date (month/day/year)	Date Started with group (I-129 only)	

Family Name	Given Name	Middle Initial	Date of Birth (month day year)
Country of Birth	Social Security No		A#
IF IN THE U.S.	Date of Arrival *(month/day/year)*	I-94#	
	Current Nonimmigrant Status:	Expires on *(month day/year)*	
Country where passport issued	Expiration Date (month/day/year)	Date Started with group (I-129 only)	

Family Name	Given Name	Middle Initial	Date of Birth (month day year)
Country of Birth	Social Security No.		A#
IF IN THE U.S.	Date of Arrival *(month day/year)*	I-94#	
	Current Nonimmigrant Status:	Expires on *(month day/year)*	
Country where passport issued	Expiration Date (month/day/year)	Date Started with group (I-129 only)	

Family Name	Given Name	Middle Initial	Date of Birth (month day year)
Country of Birth	Social Security No.		A#
IF IN THE U.S.	Date of Arrival *(month/day/year)*	I-94#	
	Current Nonimmigrant Status:	Expires on *(month day/year)*	
Country where passport issued	Expiration Date (month/day/year)	Date Started with group (I-129 only)	

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BILLING CODE 4410-10-C

DRAFT

OMB# 1115–XXXX

Application for Travel Document

INSTRUCTIONS

Purpose of This Form

This form is used to apply for an INS travel document, reentry permit, refugee travel document, or advance parole document. Each applicant must file a separate application.

Who May File

Reentry permit. If you are in the United States as a permanent resident or conditional resident, you may apply for a reentry permit. A reentry permit allows a permanent resident or conditional resident to apply for admission to the U.S. during the permit's validity without having to obtain a returning resident visa from an American Consulate. A reentry permit is not required for return from a trip of less than one year's duration.

Possession of a reentry permit does not relieve you of any of the requirements of the immigration laws except the necessity to obtain a visa from an American consulate. For the purpose of later naturalization, absence from the United States for 1 year or more will normally break the continuity of any required period of continuous residence in the United States and you will need to file an application to preserve residence for naturalization purposes. Inquire at your local INS office for further information.

Refugee travel document. If you are in the United States in a valid refugee or asylee status, or obtained permanent residence as a direct result of refugee or asylee status in the U.S. you may apply for a refugee travel document. A refugee travel document is a document issued by the Service in implementation of Article 28 of the U.N. Convention of July 28, 1951. You must have a refugee travel document to return to the United States after temporary travel abroad unless you are traveling to Canada to apply for a U.S. immigrant visa (see advance parole document below).

Advance parole document. If you are outside the United States and must travel to the United States temporarily for emergent business or emergent personal reasons, you may apply for an advance parole document to be paroled into the U.S. on humanitarian grounds if you cannot obtain the necessary visa and any required waiver of excludability. Parole cannot be used to circumvent normal visa issuing procedures, and is not a means to bypass delays in visa issuance. Parole is an extraordinary measure, sparingly used to bring an otherwise inadmissible alien into the U.S. for a temporary period of time due to a very compelling emergency.

Another person who is in the U.S. may file this application in your behalf. He or she should complete Part 1 with information about himself or herself.

If you are in the United States you may apply for an Advance Parole document if you:

- Have an adjustment of status application pending which is only being held in abeyance because a visa number is not immediately available and you seek to travel abroad for bona fide business or emergent personal reasons;
- Have an adjustment of status application pending for any other reason and you seek to travel abroad for emergent personal or bona fide business reasons;
- Hold refugee or asylum status and intend to depart temporarily to apply for a U.S. immigrant visa in Canada; or
- Seek to travel abroad temporarily for emergent personal or business reasons.

An advance parole document is issued solely to authorize the temporary parole of an individual into the United States. It may be accepted by a transportation company in lieu of a visa as authorization for the holder to travel to the United States. It is not issued to serve in lieu of any required passport.

Additional Processing Criteria

Reentry Permit or Refugee Travel Document. A reentry permit or refugee travel document may not be issued to you if:

- You have already been issued such a document and it is still valid, unless the prior document has been returned to the Service or you can demonstrate it was lost; or
- Due to national security, diplomatic or public safety reasons the government has published a notice in the Federal Register precluding issuance of such a document for travel to the area you intend to go to.

In addition, a reentry permit may not be issued if you have been a permanent resident for more than 5 years and have been outside the U.S. for more than 4 of the last 5 years, unless you are a crewman regularly serving aboard an aircraft or vessel of American registry and the travel is in connection with your duties as a crewman, or your travel is on the orders of the United States government, other than exclusion or deportation order.)

Advance Parole. An advance parole may not be issued to a person who is in deportation proceedings, is the beneficiary of a private bill, or is subject to the 2 year foreign residence requirement due to having held J–1 nonimmigrant status.

General Filing Instructions

Please answer all questions by typing or clearly printing in black ink. Indicate that an item is not applicable with "N/A". If an answer is "none," please so state. If you need extra space to answer any item, attach a sheet of paper with your name and your A#, if any, and indicate the number of the item. Every application must be properly signed and filed with the correct fee. You must file your application with the required Initial Evidence. If you are under 14 years of age, your parent or guardian may sign the application in your behalf.

A reentry permit or refugee travel document may be sent to a U.S. Consulate or INS office overseas for you to pick up if you request it when you file your application. However, you must be in the U.S. when you file the application.

Initial Evidence

Evidence of eligibility.

If you are a permanent resident or conditional resident, you must attach:

- A copy of your alien registration receipt card; or
- If you have not yet received your alien registration receipt card, a copy of the biographic page and the page indicating initial admission as a permanent resident of your passport, or other evidence that you are a permanent resident; or
- A copy of the approval notice of a separate application for replacement of your alien registration receipt card or temporary evidence of permanent resident status.

If you are a refugee or asylee applying for a refugee travel document, you must attach a copy of the document issued to you by the Service showing your refugee or asylee status and indicating the expiration of such status.

If you are in the U.S. and are applying for an advance parole document for yourself you must attach a copy of any document for yourself issued by the Service showing any present status in the United States, and an explanation or other evidence demonstrating the circumstances that warrant issuance of advance parole. If you are basing your eligibility for advance parole on your separate application for adjustment of status, you must also attach a copy of the filing receipt for that application. If you are traveling to Canada to apply for an immigrant visa, you must also attach a copy of the consular appointment.

If the person to be paroled is outside the U.S., you must also submit:

- A statement of how, and by whom, medical care, housing, transportation, and other expenses and subsistence need will be met;
- An Affidavit of Support (Form 1–134), with evidence of the sponsor's occupation and ability to provide necessary support;
- A statement of why a U.S. visa cannot be obtained, including when and where attempts were made to obtain a visa;
- A statement of why a waiver of excludability cannot be obtained to allow issuance of a visa, including when and where attempts were made to obtain a waiver, and a copy of any written decision;
- A copy of any decision on an immigrant petition filed for the person, and evidence regarding any pending immigrant petition; and
- A complete description of the emergent reasons why parole should be authorized and copies of any evidence you wish considered, and indicating the length of time for which parole is requested.

Photographs. You must submit 2 identical natural color photographs of yourself taken within 30 days of this application. The photos must have a white background, be unmounted, printed on thin paper, and be glossy and unretouched. They should show a three-quarter frontal profile showing the right side of your face, with your right ear visible and with your head bare (unless you are wearing a headdress as required by a religious order of which you are a member). The photos should be no larger than 2 X 2 inches, with the distance from the top of the head to just below the chin about 1 and ¼ inches. Lightly print your A# on the back of each photo with a pencil. (If you are applying for an advance parole and you are outside the U.S., keep these photographs. You will be instructed as to where to submit them if parole is approved. If you are applying for a parole for another person, the required photographs are of the person to be paroled.)

Copies. If these instructions state that a copy of a document may be filed with this application and you choose to send us the original, we may keep that original for our records.

Where to File

Reentry Permit or Refugee Travel Document. Mail your application to: USINS, Northern Service Center, 100 Centennial Mail North, Room B-26, LINCOLN, NE 68508.

Advance Parole. If the person being filed for is in the United States, file the application at the INS office with jurisdiction over the area in which you live. If he or she is not in the United States, mail it to: USINS, Office of International Affairs and Parole, 425 I Street N.W., Room 1203, Washington, DC 20536.

Effect of Travel Before the Travel Document is Issued

Departure from the United States before a decision is made on an application for a reentry permit or refugee travel document does not affect the application. Departure from the United States or application for admission to the United States before a decision is made on an application for an advance parole document shall be deemed an abandonment of the application.

Fee

The fee for this application is $65.00. The fee must be submitted in the exact amount. It cannot be refunded. DO NOT MAIL CASH. All checks and money orders must be drawn on a bank or other institution located in the United States and must be payable in United States currency. The check or money order should be made payable to the Immigration and Naturalization Service, except that:

- If you live in Guam, and are filing this application in Guam, make your check or money order payable to the "Treasurer, Guam."
- If you live in the Virgin Islands, and are filing this application in the Virgin Islands, make your check or money order payable to the "Commissioner of Finance of the Virgin Islands."

Checks are accepted subject to collection. An uncollected check will render the application and any document issued invalid. A charge of $5.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn.

Processing Information

Rejection. Any application that is not signed or is not accompanied by the correct fee will be rejected with a notice that the application is deficient. You may correct the deficiency and resubmit the application. However, an application. However, an application is not considered properly filed until it is accepted by the Service.

Initial processing. Once the application has been accepted, it will be checked for completeness, including submission of the required initial evidence. If you do not completely fill out the form, or file it without required initial evidence, you will not establish a basis for eligibility, and we may deny your application.

Requests for more information or interview. We may request more information or evidence or we may request that you appear at an INS office for an interview. We may also request that you submit the originals of any copy. We will return these originals when they are no longer required.

Decision. You will be advised of the decision on your application. If it is approved, the document will be issued.

Invalidation. Any travel document obtained by making a material false representation or concealment in this application will be invalid. A document will also be invalid if you are ordered excluded or deported. In addition, a refugee travel document will be invalid if the U.N. Convention of July 28, 1951, shall, cease to apply or shall not apply to you as provided in Article 1C, D, E, or F of the Convention.

Effect of Claim to Nonresident Alien Status for Federal Income Tax Purposes

An alien who has actually established residence in the United States after having been submitted as an immigrant or after having adjusted status to that of an immigrant, and who is considering the filing of a nonresident alien tax return of the non-filing of a tax return on the ground that he/she is a nonresident alien, should consider carefully the consequences under the immigration and naturalization laws if he/she does so.

If you take such action, you may be regarded as having abandoned resident in the United States and as having lost immigrant status under the immigration and naturalization laws. As a consequence, you may be ineligible for a visa or other document for which lawful permanent resident aliens are eligible; you may be inadmissible to the United States if you seek adminssion as a returning resident; and you may become ineligible for naturalization on the basis of your original entry or adjustment as an immigrant.

Penalties

If you knowingly and willfully falsify or conceal a material fact or submit a false document with this request, we will deny the benefit you are filing for, and may deny any other immigration benefit. In addition, you will face severe penalties provided by law, and may be subject to criminal prosecution.

Privacy Act Notice

We ask for the information on this form, and associated evidence, to

determine if you have established eligibility for the immigration benefit you are filing for. Our legal right to ask for this information is in 8 USC 1203 and 1225. We may provide this information to other government agencies. Failure to provide this information, and any requested evidence, may delay a final decision or result in denial of your request.

Paperwork Reduction Act Notice

We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. The estimated average time to complete and file this application is as follows: (1) 10 minutes to learn about the law and form; (2) 10 minutes to complete the form; and (3) 35 minutes to assemble and file the application, for a total estimated average of 55 minutes per application. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to both the Immigration and Naturalization Service, 425 I Street, N.W., Room 5304, Washington, D.C. 20536; and the Office of Management and Budget, Paperwork Reduction Project, OMB No. 1115–XXXX, Washington, D.C. 20503.

BILLING CODE 4410-10-M

U.S. Department of Justice
Immigration and Naturalization Service

OMB #1115 XXXX

Application for Travel Document

START HERE - Please Type or Print

Part 1. Information about you.

Family Name	Given Name	Middle Initial

Address C/O

Street Number and Name	Apt. #

City	State or Province

Country	ZIP/Postal Code

Date of Birth (Month/Day/Year)	Country of Birth

Social Security #	A #

Part 2. Application Type (check one).

a. ☐ I am a permanent resident or conditional resident of the United States and I am applying for a Reentry Permit.

b. ☐ I now hold U.S. refugee or asylee status and I am applying for a Refugee Travel Document.

c. ☐ I am a permanent resident as a direct result of refugee or asylee status, and am applying for a Refugee Travel Document.

d. ☐ I am applying for an Advance Parole to allow me to return to the U.S. after temporary foreign travel.

e. ☐ I am outside the U.S. and am applying for an Advance Parole.

f. ☐ I am applying for an Advance Parole for another person who is outside the U.S. *Give the following information about that person*

Family Name	Given Name	Middle Initial

Date of Birth (Month/Day/Year)	Country of Birth

Foreign Address - C/O

Street Number and Name	Apt. #

City	State or Province

Country	ZIP/Postal Code

Part 3. Processing Information.

Date of Intended departure (Month/Day/Year)	Expected length of trip

Are you, or any person included in this application, now in exclusion or deportation proceedings?

☐ No ☐ Yes, at (give office name) _____

If applying for an Advance Parole Document, skip to Part 7.

Have you ever before been issued a Reentry Permit or Refugee Travel Document?

☐ No ☐ Yes (give the following for the last document issued to you)

Date Issued	Disposition (attached, lost, etc.)

Form I-131 (Rev. 11/01/91)

Continued on back.

FOR INS USE ONLY

Returned _____ Receipt

Resubmitted _____

Reloc Sent _____

Reloc Rec'd _____

☐ Applicant Interviewed on _____

Document Issued
- ☐ Reentry Permit
- ☐ Refugee Travel Document
- ☐ Single Advance Parole
- ☐ Multiple Advance Parole

Validity to _____

If Reentry Permit or Refugee Travel Document
- ☐ Mail to Address in Part 2
- ☐ Mail to American Consulate
- ☐ Mail to INS overseas office

AT

Remarks:
- ☐ Document Hand Delivered

On _____ By _____

Action Block

To Be Completed by *Attorney or Representative*, if any

☐ Fill in box if G-28 is attached to represent the applicant

VOLAG#

ATTY State License #

Part 3. Processing Information. (continued)

Where do you want this travel document sent? (check one)

a. ☐ Address in Part 2, above

b. ☐ American Consulate at (give City and Country, below)

c. ☐ INS overseas office at (give City and Country below)

City Country

If you checked b. or c., above, give your overseas address:

Part 4. Information about the Proposed Travel.

Purpose of trip. *If you need more room, continue on a separate sheet of paper*	List the countries you intend to visit.

Part 5. Complete only if applying for a Reentry Permit.

Since becoming a Permanent Resident (or during the past five years, whichever is less) how much total time have you spent outside the United States?	☐ less than 6 months ☐ 6 months to 1 year ☐ 1 to 2 years	☐ 2 to 3 years ☐ 3 to 4 years ☐ more than 4 years
Since you became a Permanent Resident, have you ever filed a federal income tax return as a nonresident, or failed to file a federal return because you considered yourself to be a nonresident? (if yes, give details on a separate sheet of paper).	☐ Yes	☐ No

Part 6. Complete only if applying for a Refugee Travel Document.

Country from which you are a refugee or asylee:

If you answer yes to any of the following questions, explain on a separate sheet of paper

Do you plan to travel to the above-named country?	☐ Yes	☐ No
Since you were accorded Refugee/Asylee status, have you ever: returned to the above-named country; applied for an/or obtained a national passport, passport renewal, or entry permit into this country; or applied for an/or received any benefit from such country (for example, health insurance benefits)?	☐ Yes	☐ No
Since being accorded Refugee/Asylee status, have you, by any legal procedure or voluntary act, re-acquired the nationality of the above-named country, acquired a new nationality, or been granted refugee or asylee status in any other country?	☐ Yes	☐ No

Part 7. Complete only if applying for an Advance Parole.

On a separate sheet of paper, please explain how you qualify for an Advance Parole and what circumstances warrant issuance of Advance Parole Include copies of any documents you wish considered. (See instructions.)

For how may trips do you intend to use this document? ☐ 1 trip ☐ More than 1 trip

If outside the U.S., at right give the U.S. Consulate or INS office you wish notified if this application is approved

Part 8. Signature.

Read the information on penalties in the instructions before completing this section. You must file this application while in the United States if filing for a reentry permit or refugee travel document

I certify under penalty of perjury under the laws of the United States of America that this petition, and the evidence submitted with it, is all true and correct. I authorize the release of any information from my records which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking.

Signature Date Daytime Telephone #

( )

Please Note: *If you do not completely fill out this form, or fail to submit required documents listed in the instructions, you cannot be found eligible for the requested document and this application will have to be denied*

Part 9. Signature of person preparing form if other than above. (sign below)

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge

Signature Print Your Name Date

Firm Name and Address Daytime Telephone #

( )

BILLING CODE 4410-10-C

Draft

OMB No. 1115–

Application to Register Permanent Residence or Adjust Status

Purpose of this Form

This form is for a person who is in the United States to apply to adjust to permanent resident status or register for permanent residence while in the U.S. It may also be used by certain Cuban nationals to request a change in the date their permanent residence began.

Who May File

You may use this form to apply for adjustment of status if you were admitted or paroled following inspection by an immigration officer, and:

- An immigrant visa number is immediately available to you because a valid visa petition filed for you has been approved, or will be immediately available if the relative visa petition filed with this application is approved, or you are eligible for another classification for which immigrant visa numbers are immediately available;
- You are the spouse or child of a person who is applying for adjustment of status or has been granted lawful permanent residence under a visa category which provides benefits for spouses and children [**Note:** The immediate relative category (parent, spouse, widow, widower, or unmarried child under 21 years old of a U.S. citizen) does not provide benefits for the immediate relative's spouse or children. Separate visa petitions must be filed for those family members.];
- You were admitted to the U.S. as a K–1 fiance(e) of a U.S. citizen and married that citizen within 90 days of your entry;
- You were admitted to the U.S. as a K–2 child of a fiance(e) a U.S. citizen and your parent married that citizen within 90 days of the parent's entry with a K–1 fiance(e) visa;
- You have been granted asylum in the U.S. and are eligible for asylum adjustment [**Note:** In most cases, you become eligible for asylum adjustment after being physically present in the U.S. for at least one year following the asylum grant.];
- You are the spouse or child of a person who was granted asylum in the U.S. and are eligible for asylum adjustment;
- You are a native or citizen of Cuba who was admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least one year; or
- You are an unmarried minor child or spouse of a Cuban native or citizen who was admitted or paroled into the U.S. after January 1, 1959, was thereafter physically present in the U.S. for at least one year and now lives with you.

If you were admitted for lawful permanent residence prior to November 6, 1966, and are a native or citizen of Cuba or the spouse or minor unmarried child of this person, you may use this form to ask to have your date of admission for lawful permanent residence changed to the date you originally arrived in the U.S. or to May 2, 1964, whichever is later.

If you have continuously resided in the U.S. since before January 1, 1972, you may use this form to ask INS to create a record of your lawful permanent residence.

If you are not included in the above categories, but believe you may be eligible for adjustment or creation of record of permanent residence, contact your local INS office.

However, unless you are applying for creation of record based on continuous residence since before 1/1/72, asylum adjustment, or as a Cuban or a spouse or unmarried child of a Cuban who was admitted after 1/1/59, you are not eligible for adjustment of status if:

- You entered the U.S. in transit without a visa;
- You entered the U.S. as a nonimmigrant crewman;
- You were not admitted or paroled following inspection by an immigration officer;
- Your authorized stay expired before you filed this application, you were employed in the U.S. without INS authorization, or you otherwise failed to maintain your nonimmigrant status; unless you are applying because you are an immediate relative of a U.S. citizen (parent, spouse, widow, widower, or unmarried child under 21 years old), a K–1 fiance(e) or K–2 fiance(e) dependent who married the U.S. petitioner within 90 days of admission, or an "H" or "I" special immigrant (foreign medical graduates, international organization employees or their derivative family members);
- You are or were a J–1 or J–2 exchange visitor, are subject to the two-year foreign residence requirement, and have not complied with or been granted a waiver of the requirement;
- You have A, E, or G nonimmigrant status, or have an occupation which would allow you to have this status, unless you complete and submit the written waiver of diplomatic rights, privileges, exemptions, and immunities (forms I–508 I–508F for French nationals, and I–566 for A or G nonimmigrants, completed according to the instructions on the forms);
- You were admitted to Guam as a visitor under the Guam visa waiver program;
- You were admitted to the U.S. as a visitor under the Visa Waiver Pilot Program, unless you are applying because you are an immediate relative of a U.S. citizen (parent, spouse, widow, widower, or unmarried child under 21 years old);
- You are already a conditional permanent resident;
- You were admitted to the U.S. as a K–1 fiance(e) but did not marry the U.S. citizen who filed the petition for you, or were admitted as the K–2 child of a fiance(e) and your parent did not marry the U.S. citizen who filed the petition.

General Filing Instructions

Please answer all questions by typing or clearly printing in black ink. Indicate that an item is not applicable with "N/A". If the answer is "none", write "none". If you need extra space to answer any item, attach a sheet of paper with your name and your alien registration number (A#), if any, and indicate the number of the item to which the answer refers. You must file your application with the required Initial Evidence. Your application must be properly signed and filed with the correct fee. If you are under 14 years of age, your parent or guardian may sign your application.

Translations. Any foreign language document must be accompanied by a full English translation which the translator has certified as complete and correct, and by the translator's certification that he or she is competent to translate from the foreign language into English.

Copies. If these instructions state that a copy of a document may be filed with this application, and you choose to send us the original, we may keep the original for our records.

Initial Evidence. If you do not completely fill in the form, or you do not file it with all the required initial evidence, you may fail to establish a basis for eligibility and INS may deny your application. This evidence must be filed with your application:

- *Birth Certificate.* A copy of your birth certificate or other record of your birth;
- *Photos.* Two (2) identical natural color photographs of yourself, taken within 30 days of this application [Photos must have a white background, be unmounted, printed on thin paper, and be glossy and unretouched. They must show a three-quarter frontal profile showing the right side of your face, with you right ear visible and with your head

bare. You may wear a headdress if required by a religious order of which you are a member. The photos must be no larger than 2 X 2 inches, with the distance from the top of the head to just below the chin about 1 and ¼ inches. Lightly print your A# (or your name if you have no A#) on the back of each photo, using a pencil.];

• *Fingerprints.* A complete set of fingerprints on Form FD–258 if you are between the ages of 14 and 75 [Do not bend, fold, or crease the fingerprint chart. You should complete the information on the top of the chart and write your A# (if any) in the space marked "Your no. OCA" or "Miscellaneous no. MNU". You should not sign the chart until you have been fingerprinted, or are told to sign by the person who takes your fingerprints. The person who takes your fingerprints must also sign the chart and write his/her title and the date you are fingerprinted in the space provided on the chart. You may be fingerprinted by police, sheriff, or INS officials or other reputable person or organization. You should call the police, sheriff, organization or INS office before you go there, since some offices do not take fingerprints or may take fingerprints only at certain times.];

• *Medical Examinationn.* You must submit a medical examination report on the form you have obtained from INS [Not required if you are applying for creation of record based on continuous residence since before 1/1/72, of if you are K–1 fiance (e) or K–2 dependent of a fiance (e) who had a medical examination within the past year as required for the nonimmigrant fiancee visa.];

• *Form G–325A.* Biographic Information Sheet. You must complete and submit the biographic information sheet if you are between 14 and 79 years of age;

• *Evidence of Status.* Submit a copy of your Form I–94, Nonimmigrant Arrival/Departure Record, showing your admission to the U.S. and current status, or other evidence of your status;

• *Employment Letter/Affidavit of Support.* A letter showing you have employment that is not a temporary job, and affidavit of support from a responsible person in the U.S., or other evidence that shows that you are not likely to be come a public charge in the U.S. [Not required if you are applying for creation of record based on continuous residence since before 1/1/72, asylum adjustment, or as Cuban or a spouse or unmarried child of a Cuban who was admitted after 1/1/59]; and

• *Evidence of Eligibility.* One or more of these documents must be submitted to show that you are eligible to file this application:

• *Evidence of Continuous Residence.* If you are applying because you have resided in the U.S. continuously since before 1/1/72, attach copies of evidence that shows you have lived in the U.S. since 1/1/72;

• *Relative or Special Immigrant Visa Petition.* If you are applying because a visa number will be immediately available if the petition is approved, attach the petition and the initial evidence required with the petition;

• *Visa Petition Approved Notice.* If you are applying because a valid visa petition filed for you has been approved, attach a copy of the approval notice;

• *Other Evidence of Eligibility for Visa Classification.* If you are applying because you are eligible for another classification for which a Visa number is immediately available, attach copies of evidence that your are eligible for the classification;

• *Marriage Certificate and Legal Termination of Other Marriages.* If you are applying because you are the spouse or child of a person who is applying for adjustment, attach a copy of you or your parent's marriage certificate and evidence of legal termination (divorce decrees, death certificates, etc.) of any other marriages [If you are a child applying because your mother is applying and your mother's current name is shown on your birth certificate, you do not need to submit these documents.];

• *Fiance(e) Petition Approval Notice and Marriage Certificate.* If you are applying because you were admitted to the U.S. as a K–1 fiance(e) of a U.S. citizen and married that citizen, attach a copy of the fiance(e) petition approval notice and your marriage certificate;

• *Fiance(e) Petition Approval Notice and Marriage Certificate or Evidence of Parent's Adjustment.* If you are applying because you were admitted to the U.S. as a K–2 child of a fiance(e) of a U.S. citizen and your parent married that citizen, attach either a copy of the fiance(e) petition approval notice and your parent's marriage certificate or evidence that your parent has applied for or been granted adjustment based upon the marriage;

• *Asylum Approval Notice I–94.* If you are applying because you were granted asylum status, attach a copy of the letter or form which shows the date you were granted asylum;

• *Asylum Approval Notice I–94, Marriage Certificate and Legal Termination of Other Marriages.* If you are applying because your spouse or parent was granted asylum, attach a copy of the letter or form which shows the date he or she was granted asylum, a copy of the marriage certificate, and copies of evidence of legal termination (divorce decrees, death certificates, etc.) of any other marriages of your spouse or parent(s);

• *Evidence of Cuban Citizenship/Nationality.* If you are applying because you are a national or citizen of Cuba, attach evidence of your citizenship or nationality, such as your passport, birth certificate or travel document.

• *Evidence of Cuban Citizenship/Nationality, Marriage Certificate and Legal Termination of Other Marriages.* If you are applying because you are the spouse or child of a national or citizen of Cuba, attach evidence of your spouse or parent's Cuban nationality or citizenship, a copy of the marriage certificate, and copies of evidence of legal termination (divorce decrees, death certificates, etc.) of any other marriages of your spouse or parent(s).

Where to file

File this application at the local INS office having jurisdiction over your place of residence.

Fee. The fee for this application is $120, except that it is $95 if you are less than 14 years old. The fee must be submitted in the exact amount. It cannot be refunded. **DO NOT MAIL CASH.** All checks and money orders must be drawn on a bank or other institution located in the United States and must be payable in United States currency. The check or money order should be made payable to the Immigration and Naturalization Service, except that:

• If you live in Guam, and are filing this application in Guam, make your check or money order payable to the "Treasurer, Guam."

• If you live in the Virgin Islands, and are filing this application in the Virgin Islands, make your check or money order payable to the "Commissioner of Finance of the Virgin Islands."

Checks are accepted subject to collection. An uncollected check will render the application and any document issued invalid. A charge of $5.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn.

Processing Information

Rejection. Any application that is not signed, or is not accompanied by the correct fee, will be rejected with a notice that the application is deficient. You may correct the deficiency and resubmit the application. However, an application is not considered properly filed until accepted by the Service.

Initial processing. Once an application has been accepted, it will be checked for completeness, including submission of the required initial evidence.

If you do not completely fill out the form, or file it without required initial evidence, you will not establish a basis for eligibility, and we may deny your application.

Requests for more information. We may request more information or evidence. We may also request that you submit the originals of any copy. We will return these originals when they are no longer required.

Interview. After you file your application you will be notified to appear at an INS office to answer questions about the application. You will be required to answer these questions under oath or affirmation. You must bring your Arrival—Departure Record (Form I–94) and any passport to the interview.

Decision. You will be notified in writing of the decision on your application.

Travel Outside the U.S. If you plan to leave the U.S. to go to any other country, including Canada or Mexico, before a decision is made on your application, contact the INS office processing your application before you leave. In many cases, leaving the U.S. without written permission will result in automatic termination of your application. Also, you may experience difficulty upon returning to the U.S. if you do not have written permission to reenter.

Penalties. If you knowingly and willfully falsify or conceal a material fact or submit a false document with this request, we will deny the benefit you are filing for, and may deny any other immigration benefit. In addition, you will face severe penalties provided by law, and may be subject to criminal prosecution.

Privacy Act Notice. We ask for the information on this form, and associated evidence, to determine if you have established eligibility for the immigration benefit you are filing for. Our legal right to ask for this information is in 8 USC 1255 and 1259. We may provide this information to other government agencies. Failure to provide this information, and any requested evidence, may delay a final decision or result in denial of your request.

Paperwork Reduction Act Notice. We try to create forms and instructions that are accurate, can be easily understood, and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. The estimated average time to complete and file this application is computed as follows: (1) 20 minutes to learn about the law and form; (2) 25 minutes to complete the form; and (3) 270 minutes to assemble and file the application, including the required interview and travel time; for a total estimated average of 5 hours and 15 minutes per application. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to both the Immigration and Naturalization Service, 425 I Street, N.W., Room 5304, Washington, D.C. 20536; and the Office of Management and Budget, Paperwork Reduction Project, OMB No. 1115–XXXX, Washington, D.C. 20503.

BILLING CODE 4410–10–M

DRAFT

U.S. Department of Justice
Immigration and Naturalization Service

OMB No. 1115-XXXX

Application to Register Permanent Residence or Adjust Status

START HERE - Please Type or Print

Part 1. Information about you.

Family Name	Given Name	Middle Initial

Address - C/O

Street Number and Name | Apt. #

City

State | Zip Code

Date of Birth (month/day/year) | Country of Birth

Social Security # | A # (if any)

Date of Last Arrival (month/day/year) | I-94 #

Current INS Status | Expires on (month/day/year)

Part 2. Application Type. *(check one)*

I am applying for adjustment to permanent resident status because:

a. ☐ an immigrant petition giving me an immediately available immigrant visa number has been approved (attach a copy of the approval notice) or a relative or special immigrant visa petition filed with this application will give me an immediately available visa number if approved.

b. ☐ My spouse or parent applied for adjustment of status and I am filing based on his or her separate application.

c. ☐ I entered as a K-1 fiance(e) of a U.S. citizen or K-2 child of a fiance(e) within the past 90 days (copy of approval notice and marriage certificate attached).

d. ☐ I was granted asylum or derivative asylum status as the spouse or child of a person granted asylum and am eligible for adjustment.

e. ☐ I am a native or citizen of Cuba admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least 1 year.

f. ☐ I am the husband, wife, or minor unmarried child of a Cuban described in (e) and am residing with that person, and was admitted or paroled into the U.S. after January 1, 1959, and thereafter have been physically present in the U.S. for at least 1 year.

g. ☐ I have continuously resided in the U.S. since January 1, 1972.

h. ☐ Other-explain_____

I am already a permanent resident and am applying to have the date I was granted permanent residence adjusted to the date I originally arrived in the U.S. as a nonimmigrant or parolee, or as of May 2, 1964, whichever is later, and: *(Check one)*

i. ☐ I am a native or citizen of Cuba and meet the description in (e), above.

j. ☐ I am the husband, wife or minor unmarried child of a Cuban, and meet the description in (f), above.

Form I-485 (09/13/91) 7th DRAFT

Continued on back.

FOR INS USE ONLY

Returned	Receipt

Resubmitted

Reloc Sent

Reloc Rec'd

☐ Applicant Interviewed

Section of Law
- ☐ Sec. 209(b), INA
- ☐ Sec. 13, Act of 9/11/57
- ☐ Sec. 245, INA
- ☐ Sec. 249, INA
- ☐ Sec. 1 Act of 11/2/66
- ☐ Sec. 2 Act of 11/2/66
- ☐ Other_____

Country Chargeable

Eligibility Under Sec. 245
- ☐ Approved Visa Petition
- ☐ Dependent of Principal Alien
- ☐ Special Immigrant
- ☐ Other_____

Preference

Action Block

To Be Completed by *Attorney* or *Representative*, if any

☐ Fill in box if G-28 is attached to represent the applicant

VOLAG#

ATTY State License #

Part 3. Processing Information.

A. Give your name exactly how it appears on your arrival /departure record (Form I-94)_____

Date of last entry into U.S. (month/day/year)	Place of last entry into the U.S. (City/State)
Were you inspected by a U.S. Immigration Officer? ☐ Yes ☐ No	In what status did you last enter? *(Visitor, Student, exchange alien, crewman, temporary worker, without inspection, etc.)*
Nonimmigrant Visa Number	
Consulate where Visa issued	Date Issued (month/day/year)
City of birth / Sex: ☐ Male ☐ Female	Marital Status: ☐ Married ☐ Single ☐ Divorced ☐ Widowed

Have you ever before applied for permanent resident status in the U.S? ☐ No ☐ Yes (give date and place of filing and final disposition):

B. List your present husband/wife, all of your sons and daughters, all of your brothers and sisters. (If you have none, write N/A. If additional space is needed, use separate paper).

Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of birth	Relationship	A #	Are they applying with you? ☐ Yes ☐ No
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of birth	Relationship	A #	Are they applying with you? ☐ Yes ☐ No
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of birth	Relationship	A #	Are they applying with you? ☐ Yes ☐ No
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of birth	Relationship	A #	Are they applying with you? ☐ Yes ☐ No
Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of birth	Relationship	A #	Are they applying with you? ☐ Yes ☐ No

C. List your present and past membership in or affiliation with every organization, association, fund, foundation, party, club, society, or similar group in the United States or in any other place. Include any foreign military service in this part. If none, write "none". Include the name of organization, location, dates of membership from and to, and the nature of the organization. If additional space is needed, use separate paper.

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Part 3. Processing Information. *(Continued)*

Please answer each of the following questions. If your answer is **"Yes"**, explain on separate paper.

1. Have you ever, in or outside the U. S.:
   a. knowingly committed an crime for which you have not been arrested? ☐ Yes ☐ No
   b. been arrested, cited, charged, indicted, fined, or imprisoned for breaking or violating any law or ordinance, excluding traffic violations? ☐ Yes ☐ No
   c. been the beneficiary of a pardon, amnesty, rehabilitation decree, other act of clemency or similar action? ☐ Yes ☐ No
2. Have you ever exercised diplomatic immunity to avoid prosecution for a criminal offense in the U. S.? ☐ Yes ☐ No
3. Have you received public assistance from any source, including the U.S. government or any state, county, city, or municipality,or are you likely to receive public assistance in the future? ☐ Yes ☐ No
4. Have you ever:
   a. practiced polygamy or plan to practice polygamy? ☐ Yes ☐ No
   b. within the past 10 years been a prostitute or procured anyone for prostitution, or intend to engage in such activities? ☐ Yes ☐ No
   c. engaged in any unlawful commercialized vice, including, but not limited to, gambling? ☐ Yes ☐ No
   d. knowingly encouraged, induced, assisted, abetted or aided, any alien to try to enter the U.S. illegally? ☐ Yes ☐ No
   e. illicitly trafficked in any controlled substance, or knowingly assisted, abetted or colluded in the illicit trafficking of any controlled substance? ☐ Yes ☐ No
5. Have you ever engaged in, conspired to engage in, or intend to engage in, or ever solicited membership or funds for, or through any means ever assisted or provided any type of material support to, any person or organization that has ever engaged or conspired to engage, in:
   a. sabotage, espionage, hijacking, or any other form of terrorist activity? ☐ Yes ☐ No
   b. any activity a purpose of which is opposition to, or the control of overthrow of, the Government of the United States, by force, violence or other unlawful means? ☐ Yes ☐ No
   c. any activity to violate or evade any law prohibiting the export from the United States of goods, technology or sensitive information? ☐ Yes ☐ No
6. Have you ever been a member of, or in any way affiliated with, the Communist Party or any other totalitarian party? ☐ Yes ☐ No
7. Did you, during the period March 23, 1933 to May 8, 1945, in association with either the Nazi Government of Germany or any organization or government associated or allied with the Nazi Government of Germany, ever order, incite, assist or otherwise participate in the persecution of any person because of race, religion, national origin or political opinion? ☐ Yes ☐ No
8. Have you ever engaged in genocide, or otherwise ordered, incited, assisted or otherwise participated in the killing of any person because of race, religion, national origin or political opinion? ☐ Yes ☐ No
9. Have you ever been excluded from the U.S. within the past year, ever been deported from the U.S., or ever been removed from the U.S. at government expense, or are you now in exclusion or deportation proceedings? ☐ Yes ☐ No
10. Are you under a final order of civil penalty for violating section 274C of the Immigration Act for use of fraudulent documents, or have you, by fraud or willful misrepresentation of a material fact, ever sought to procure, or procured, a visa, other documentation, entry into the U.S., or any other immigration benefit? ☐ Yes ☐ No
11. Have you ever left the U.S. to avoid being drafted into the U.S. Armed Forces? ☐ Yes ☐ No
12. Have you ever been a J nonimmigrant exchange visitor who was subject to the 2 year foreign residence requirement and not yet complied with that requirement? ☐ Yes ☐ No
13. Are you now withholding custody of a child outside the U.S. from a person granted custody of the child? ☐ Yes ☐ No

Continued on back

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Part 4. Signature. *(Read the information on penalties in the instructions before completing this section. You must file this application while in the United States.)*

I certify under penalty of perjury under the laws of the United States of America that this application, and the evidence submitted with it, is all true and correct. I authorize the release of any information from my records which the Immigration and Naturalization Service needs to determine eligibility for the benefit I am seeking.

Signature **Print Your Name** ***Date*** ***Daytime Phone Number***

Please Note: *If you do not completely fill out this form, or fail to submit required documents listed in the instructions, you cannot be found eligible for the requested document and this application may be denied.*

Part 5. Signature of person preparing form if other than above. *(Sign Below)*

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature **Print Your Name** ***Date*** ***Day time Phone Number***

Firm Name
and Address

DRAFT

Form I-485 (09-13-91) 7th DRAFT

[FR Doc. 91–24175 Filed 10–8–91; 8:45 am]
BILLING CODE 4410–10–C

Lodging of Final Judgment by Consent Pursuant to the Safe Drinking Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 27, 1991, a Consent Decree in *United States* v. *Cascade Public Service Company, et al.* No. CV–90–N–1762 was lodged with the United States District Court for the District of Colorado.

The United States brought this action pursuant to section 1414 of the Safe Drinking Water Act (the "SDWA"), 42 U.S.C. 300g-3, against defendants Cascade Public Service Company, Cascade Town Company, and Charles E. Cusack, Jr. (collectively "Defendants") in connection with their ownership and operation of the public water system in Cascade, Colorado ("the Cascade System"). In the Complaint, filed on October 3, 1990, the United States sought a permanent injunction and civil penalties against defendants for violations of the Maximum Contaminant Levels ("MCL") for turbidity, 40 CFR 141.13, and for failing to comply with three Administrative Orders issued by EPA.

The Consent Decree provides that the defendants shall be jointly and severally liable for payment of $19,000.00 in civil penalties, payable within six months of entry of the Decree. Interest computed in accordance with 28 U.S.C. 1961 shall begin to accrue upon entry of the Decree. Defendants also agree to comply with the SDWA for the duration of the Decree and to provide EPA with copies of all data concerning the Cascade System's water. The Decree also confirms the United States' right to inspect defendants' operations at any time, without notice. Finally, the Decree provides for payment of stipulated penalties for violations of the Decree.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Cascade Public Service Company, et al.*, DOJ Ref. No. 90–5–1–1–3574. The proposed Consent Decree may be examined at the office of the United States Attorney, District of Colorado, 633 17th Street, suite 1600, Denver, Colorado 80202, and at the Environmental Protection Agency, 999 18th Street, suite 500, Denver, Colorado 80202–2405. The Decree may also be examined at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004, 202–347–2072. A copy of the proposed Consent Decree may be obtained in person or by mail from the Document Center. In requesting a copy of the proposed Consent Decree, please enclose a check in the amount of $3.50 (25 cents per page reproduction cost) payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 91–24243 Filed 10–8–91; 8:45 am]

BILLING CODE 4410–01–M

Consent Decree in Action Under the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that a Consent Decree in *United States* versus *City of Kentwood, MI, and Kent County, MI.* was lodged with the United States District Court for the Western District of Michigan on September 27, 1991. The Consent Decree addresses the hazardous waste contamination at the Kentwood Landfill Site in Kentwood, Michigan. The Consent Decree requires the defendants to implement the remedial action selected and cleanup standards set forth in the Record of Decision and Scope of Work for the Kentwood Site. Additionally, the defendants are required to reimburse the United States for $275,000 in U.S. EPA past costs at the Kentwood Site.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Washington, DC 20530 and should refer to *United States* versus *City of Kentwood, MI. and Kent County, MI.*, D.O.J. Ref. No. 90–11–2–630.

The Consent Decree may be examined at the Office of the United States Attorney, 399 Federal Bldg, 110 Michigan Street NW., Grand Rapids, Michigan, 49503; at the Region V office of the U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois, 60604; and at the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Washington, DC 20004 (202–347–2072). A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section Document Center, 601 Pennsylvania Avenue, NW., Box 1097, Washington, DC 20004. In requesting a copy, please enclose a check in the amount of $14.75 (25 cents per page reproduction charge) payable to Consent Decree Library.

John C. Cruden,

Section Chief, Environment and Natural Resources Division.

[FR Doc. 91–24242 Filed 10–8–91; 8:45 am]

BILLING CODE 4410–01–M

[AAG/A Order No. 54–91]

Privacy Act of 1974; New System

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Department of Justice, Office of the Inspector General (OIG), proposes to establish a new system of records entitled, "Office of the inspector General, Freedom of Information/Privacy Act (FOI/PA) Records (JUSTICE/OIG–003)." This system will enable the OIG to process requests for access to its records under the Freedom of Information and Privacy Acts.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be provided a 30-day period in which to comment on the routine uses of a new system; the Office of Management and Budget (OMB), which has oversight responsibilities under the Act, requires that it be given a 60-day period in which to review the system.

Therefore, please submit any comments by November 8, 1991. The public, OMB, and Congress are invited to send written comments to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Information Resources Management, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1103, Chester Arthur Building).

In accordance with Privacy Act requirements, the Department of Justice has provided a report on the proposed system to OMB and the Congress.

Dated: September 6, 1991.

Harry H. Flickinger,

Assistant Attorney General for Administration.

Justice/OIG–003

SYSTEM NAME:

Office of the Inspector General, Freedom of Information/Privacy Acts (FOI/PA) Records (JUSTICE/OIG–003).

SYSTEM LOCATION:

U.S. Department of Justice, 10th and Constitution Avenue, NW Washington, DC 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who request disclosure of records pursuant to the Freedom of Information Act; and persons who request access to or correction of records pertaining to themselves contained in Office of the Inspector General (OIG) systems of records pursuant to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains copies of (1) FOI/PA requests received by the OIG; (2) copies of OIG responses to requesters; (3) copies of the documents responsive to the requests; (4) copies of documents withheld; (5) internal memoranda and correspondence related to the requests; (6) records relating to appeals and/or litigation and (7) disclosure accounting records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Inspector General Act of 1978, 5 U.S.C. App., as amended by the Inspector General Act Amendments of 1988; 5 U.S.C. 552 and 5 U.S.C. 552a.

PURPOSE:

This system has been established to enable the OIG to receive, process and respond to FOI/PA requests for its records. Employees of the OIG may access the system to perform various receipt and response functions with regard to FOI/PA requests; to determine the status and content of responses to correspondence; to respond to inquiries from OIG personnel, the Department's Office of Legislative Affairs, and from Congressional offices regarding the status of correspondence; and to carry out any other similar or related duties.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

a. A record may be disclosed to a Federal agency, which has furnished that record to the Department, to permit that agency to make a decision as to access or correction or to consult with that agency as to the propriety of access or correction.

b. A record may be disclosed to any appropriate Federal, State, local, or foreign agency to verify the accuracy of information submitted by an individual who has requested amendment or correction of records.

c. A record may be disclosed to the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

d. A record may be disclosed as necessary to respond to inquiries by congressional offices on behalf of individual constituents who are subjects of OIG records.

e. A record may be disclosed to the National Archives and Records Administration and to the General Services Administration during a records management inspection conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is stored manually in file jackets and electronically in office automation equipment.

RETRIEVABILITY:

Entries are arranged alphabetically and numerically and are retrieved from office automation equipment with reference both to the surnames of the individuals covered by this system of records and by an assigned number. Information may also be retrieved from file jackets by an assigned number.

SAFEGUARDS:

Information is stored in locked file cabinets and in office automation equipment in secured rooms or guarded buildings, and is used only by authorized, sacreened personnel. Manual records are in locked cabinets or in safes which can be accessed by key or combination formula only. Passwords are arequired to access automated data.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with General Records Schedule 14, items 16, 17, 18 and items 25, 26, 27 and 28.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the General Counsel, Office of the Inspector General, Department of Justice, 10th and Constitution Avenue NW., Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager listed above.

RECORDS ACCESS PROCEDURES:

Part of this system is exempted from this requirement pursuant to 5 U.S.C. 552a (j)(2), (k)(1), and (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access. A determination as to exemption shall be made at the time a request for access is received. A request for access to records contained in this system shall be made in writing, with the envelope and the letter clearly marked "Privacy Access Request." The request shall include the full name of the individual involved, his or her current address, date and place of birth, notarized signature, together with any other identifying number of information which may be of assistance in locating the record, and a return address for transmitting the information. Access requests should be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURE:

Part of this system is exempted from the requirement pursuant to 5 U.S.C. 552a (j)(2), (k)(1), and (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for contest is received. Requesters shall direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reason for contesting it, and the proposed amendment to the information.

RECORD SOURCE CATEGORIES:

Sources of information contained in the system include (1) the individual covered by the system and (2) records responsive to FOI/PA requests.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsection (d) of the Privacy Act pursuant to 5 U.S.C. 552a (j)(2), (k)(1), and (k)(2). This exemption applies only to the extent that information in a record pertaining to an individual relates to official Federal investigations and matters of law enforcement. All other records are not being exempted. Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the Federal Register.

[FR Doc. 91-24244 Filed 10-8-91; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions,

the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below not later than October 21, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than October 21, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 30th day of September 1991

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition number	Articles produced
Brunswick Display (Co.)	East Brunswick, NJ	09/30/91	09/19/91	26,378	Plastic Display Cases for Cosmetics.
Eagle-Picher, Automotive Group (Co.)	Willoughby, OH	09/30/91	09/16/91	26,379	Rubber Floor Mats for Trucks, Vans.
Eastman Christensen (Wkrs)	Houston, TX	09/30/91	08/02/91	26,380	Oil and Gas.
Fruehauf Trailer Operations (USWA)	Uniontown, PA	09/30/91	09/18/91	26,381	Tank Trailers.
General Electric Co. (Wkrs)	Evendale, OH	09/30/91	09/18/91	26,382	Military Aircraft Engine Control Product.
General Electric Co., Seattle Eng. (Co.)	Bellevue, WA	09/30/91	09/18/91	26,383	Military Aircraft Engine Control Product.
General Electric Co., ACSD (Co.)	Ft. Wayne, IN	09/30/91	09/18/91	26,384	Military Aircraft Engine Control Product.
Goldline Connector, Inc. (Wkrs)	New Bedford, MA	09/30/91	09/11/91	26,385	Assemble Rear Time Audio Analyzers.
Goldline Maine, Inc. (Wkrs)	Caribou, ME	09/30/91	09/11/91	26,386	Assemble Rear Time Audio Analyzers.
Junior Form Lingerie, Inc ILGWU	Somerset, PA	09/30/91	09/19/91	26,387	Junior Sportswear, Lingerie.
Linnton Plywood Association (Wkrs)	Portland, OR	09/30/91	09/17/91	26,388	Plywood.
Mason Lumber Products, Inc. (Wkrs)	Beaver, WA	09/30/91	09/18/91	26,389	Industrial Grades of Lumber.
Mountain Valley Petroleum (Co.)	Englewood, CO	09/30/91	09/18/91	26,390	Hydrocarbons Drilling and Exploration.
NTT Inc., National Tel-Tronics (IBEW)	Meadville, PA	09/30/91	09/17/91	26,391	Electrical Connectors.
Pacific Enterprises Oil Co (Wkrs)	Houston, TX	09/30/91	09/16/91	26,392	Crude Oil, Natural Gas.
Pacific Enterprises Oil Co (Wkrs)	Denver, CO	09/30/91	09/16/91	26,393	Crude Oil, Natural Gas.
Pacific Enterprises Oil Co (Wkrs)	Dallas, TX	09/30/91	09/16/91	26,394	Crude Oil, Natural Gas.
Pacific Enterprises Oil Co (Wkrs)	Casper, WY	09/30/91	09/16/91	26,395	Crude Oil, Natural Gas.
Somerset Manufacturing Co., Inc. (ILGWU)	Somerset, PA	09/30/91	09/13/91	26,396	Ladies sportswear, Lingerie.
Tex-Tin Corp (Wkrs)	Texas City, TX	09/30/91	09/17/91	26,397	Bulk Tin.
The Timken Co (USWA)	Canton, OH	09/30/91	09/16/91	26,398	Bearings and Steel.
Wilson Automation (UAW)	Warren, MI	09/30/91	09/16/91	26,399	Automatic Assembly Machinery.

[FR Doc. 91-24314 Filed 10-8-91; 8:45 am]
BILLING CODE 4510-30-M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of September 1991.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-26,028; The Electroloy Co., Hatfield, PA

TA-W-26,011; Sweda Group, Inc., Irving, TX

TA-W-26,081; Teledyne Pittsburgh Tool Steel, Monaca, PA

TA-W-26,103; Gencorp Automotive, Marion, IN

TA-W-26,126; Erico Fastening Systems, Morrestown, NJ

TA-W-26,138; Rawlings Sporting Goods Co., Plant #7, Licking, MO

TA-W-26,068; Johnson Controls, Inc., Engineered Plastic Div., Erie, PA

TA-W-26,069; K&G Manufacturing Fairbault, MN

TA-W-26,035; J&M Cut & Sew, Inc., Gratz, PA

TA-W-26,012; Timely Products Corp., Stratford, CT

TA-W-26,013; U.S. Steel Corp., Fairless Works, Fairless Hills, PA

TA-W-25,975; Paul Terri Sportswear, Inc., Long Branch, NJ

TA-W-26,010; Sheldahl, Inc., Northfield, NM

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-26,100; Fiber Material, Inc., Rumford Center, ME

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,940; Midwest Waltham Abrasives Superior Hone, Owosso, MI

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–26,174; Calgon Corp., Water Management Div., Pittsburgh, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–26,101; Ford Motor Co., Walton Hills, OH

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–26,067; John B. Harris Mines, Inc., Lewisburg, WV

U.S. imports of coal have been negligible in 1989, 1990 and first quarter of 1991.

TA–W–26,141; Simon Bache & Co., Brooklyn, NY

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–25,921; McNally, Inc., Pittsburgh, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–25,921A and 25,921B; McNally Replacement Parts, Inc., Pittsburgh, KS and McNally Systems West, Pittsburgh, KS

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–26,135 and 25,136; PEP Drilling Co., Mt. Vernon, IL and Carrollton, OH

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–26,137; PPG Industries, Inc., Works #7, Cumberland, MD

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–26,140; Rome Turney Radiator Co., Rome, NY

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–26,132; Omega Tube & Conduit Corp., Little Rock, AR

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–26,125; Electrosound Group, Midwest, Shelbyville, IN

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–26,058; Center Tool & Machine Co., Cheboygan, MI

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–26,155; Halliburton Services Manufacturing Center, Duncan, OK

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–26,170; Union Drilling (A Division of Equitable Resources Energy Co), Centerville, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–26,129; High Country Ford, Inc., Newland, NC

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–26,095; Caloric Corp., Topton, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–26,142; Sinclair Radio Laboratories, Inc., Tonawanda, NY

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–26,153; General Electric Aerospace Defense Systems Dept., Pittsfield, MA

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–26,162; Laser Master Technologies, Inc., Eden Prairie, MN

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA–W–26,164; Midamerica Resources, Inc., Midland, TX

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

TA–W–26,171; Western Atlas International Atlas Wireline Service Cody, WY

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations

TA–W–25,990; Alton Shoe Co., Farmington, NH

A certification was issued covering all workers separated on or after June 10, 1990.

TA–W–26,176; Cherry Richline, St. Paul, MN

A certification was issued covering all workers separated on or after January 1, 1991.

TA–W–26,121; Ansell, Inc., Tucson, AZ

A certification was issued covering all workers separated on or after June 28, 1990.

TA–W–26,087; Woodings-Verona Tool Workers, Inc., Verona, PA

A certification was issued covering all workers separated on or after June 26, 1990.

TA–W–26,088; Woodings-Verona Tool Workers, Inc., Columbia, OH

A certification was issued covering all workers separated on or after June 26, 1990.

TA–W–26,089; Woodings-Verona Tool Works, Inc., Falls City, NE

A certification was issued covering all workers separated on or after June 26, 1990.

TA–W–26,114; Sportlight, Inc., Marinna, AR

A certification was issued covering all workers separated on or after January 1, 1991 and before August 1, 1991.

TA–W–26,082; Triumph Machine Corp., Hackettstown, NJ

A certification was issued covering all workers separated on or after June 28, 1990.

TA–W–26,993; Evan-Picone, Inc., North Bergen, NJ

A certification was issued covering all workers separated on or after June 20, 1990.

TA–W–26,156 and 26, 157; Herman Pynveld's Son Corp., New Albany & Montgomery, PA

A certification was issued covering all workers separated on or after July 26, 1990.

TA–W–26,036; Jen/Chris, Inc., New York, NY

A certification was issued covering all workers separated on or after June 24, 1990 and before January 31, 1991.

TA-W-26,230; Reynolds Metal Co., Troutdale, OR

A certification was issued covering all workers separated on or after July 7, 1991.

TA-W-26,108; Halliburton Services Stimulation Services Flex Crew Headquartered in Ducan, OK

A certification was issued covering all workers separated on or after July 8, 1990 and before September 1, 1991.

TA-W-26,214; Halliburton Services Stimulation Services Flex Crew, Casper, WY

A certification was issued covering all workers separated on or after August 13, 1990 and before September 1, 1991.

TA-W-26,215; Halliburton Services Stimulation Services Flex Crew, Sanangelo, TX

A certification was issued covering all workers separated on or after August 13, 1990 and before September 1, 1991.

TA-W-26,216; Halliburton Services Stimulation Services Flex Crew, Drumwright, OK

A certification was issued covering all workers separated on or after August 13, 1990 and before September 1, 1991.

I hereby certify that the aforementioned determinations were issued during the months of September, 1991. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: October 3, 1991.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 91-24315 Filed 10-8-91; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

Alaska State Standards; Approval

1. Background

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On September 28, 1984, notice was published in the **Federal Register** (49 FR 38252) announcing final approval of the State's plan and amending subpart R of part 1952.

The Alaska plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act. Section 1953.20 provides that where any alteration in the Federal program could have an adverse impact on the at least as effective status of the State program, a program change supplement to a State plan shall be required.

In response to Federal standards changes, the State has submitted by letter dated December 14, 1984, from Jim Robison, Commissioner, to James W. Lake, Regional Administrator, and incorporated as part of the plan, State standard amendments comparable to 29 CFR 1910.1025, Occupational Exposure to Lead, as amended and published in the **Federal Register** (49 FR 23175) on June 5, 1984, following the lifting of an administrative stay concerning written plans for lead compliance programs. The State's standard amendments were adopted on November 16, 1984, with an effective date of December 16, 1984. The State incorporated editorial modifications, including using the State's numbering system and changing the word "where" to "if." (The State's previous Lead amendments submitted in response to Federal amendments through March 8, 1983, were approved August 10, 1984, at 49 FR 32126.)

In response to Federal standards changes, the State has submitted by letter dated March 28, 1990, from Tom Stuart, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, Alaska's amendments to the Asbestos, Tremolite, Anthophyllite, and Actinolite rules for General Industry and Construction. These State rules are comparable to 29 CFR 1910.1001 and 29 CFR 1926.58, Asbestos, Tremolite, Anthophyllite and Actinolite; Final Rule and Amendment, as published in the **Federal Register** (53 FR 35625) dated September 14, 1988. The State's Asbestos amendments in response to the Federal amendments of June 20, 1986 (as corrected May 12, 1987) and October 17, 1986, were approved on February 5, 1990 (55 FR 3779).

The State's amendments pertaining to Asbestos, Tremolite, Anthophyllite and Actinolite, contained in AAC subchapters 4 and 5, were adopted on October 27, 1989, and became effective on February 28, 1990. A notice of proposed changes was published in three major newspapers on August 14, 1989, and August 23, 1989. The public comment period was open for 30 days by Tom Stuart, Director, under authority vested by AS 19.60.020. No public hearing was held. The State incorporated editorial modifications, and changed the words "shall" and "shall not" to "must" and "may not" throughout the standards as required by Alaska's Attorney General. The State also declined to use "and/or" throughout the standard, and chose instead to use "and" and "or" where appropriate.

In response to a Federal standards change, the State has submitted by letter dated May 17, 1990, from Tom Stuart, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard amendment comparable to 29 CFR 1910.66, as amended and published in the **Federal Register** (54 FR 31456) on July 28, 1989. The State's original standard was published in the **Federal Register** (40 FR 50582) on October 30, 1975. This State standard amendment, which is contained in AAC 01.0201, Powered Platforms for Building Maintenance, corresponds to the Federal standard 29 CFR 1910.66, Powered Platforms for Building Maintenance. The State's standard amendment was promulgated after notifications were published in the statewide media on September 29, 1989, and October 6, 1989. The public comment period was open for thirty days by Jim Sampson, Commissioner, under authority vested by AS 19.60.020. The State standard amendment was adopted on December 1, 1989, with an effective date of May 12, 1990. The State has substituted State terms for Federal terms as follows: "must" and "may not" for "shall" and "shall not" and incorporated the State's numbering system.

In response to a Federal standards change, the State has submitted by letter dated August 1, 1990, from Tom Stuart, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard comparable to 29 CFR 1910.147, as published in the **Federal Register** (54 FR 36687) on September 1, 1989. This State standard amendment, which is contained in AAC 01.0203, The Control of Hazardous Energy Sources (Lockout/Tagout), corresponds to Federal standard 29 CFR 1910.147, Control of Hazardous Energy Sources (Lockout/Tagout). The State's standard amendment was promulgated

after notifications were published in the statewide media on December 13 and 20, 1989. Public hearings were held on January 17–19, 1990. The public comment period was open for thirty days by Jim Sampson, Commissioner, under authority vested by AS 19.60.020. The State standard amendment was adopted on February 12, 1990, with an effective date of August 8, 1990. The State has substituted State terms for Federal terms as follows: "may not" for "shall not"; "must" for "shall"; "use" for "utilization"; and "if" for "when" or "where"; as required by the Alaska's Attorney General. Editorial changes have been made to correct obvious Federal errors and to accommodate the State's codification and numbering system.

In response to a Federal standards change, the State has submitted by letter dated September 17, 1990, from Tom Stuart, Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standards revision comparable to 29 CFR 1926.800, Underground Construction, as published in the **Federal Register** (54 FR 23850) on June 2, 1989. The State's original construction standard was published in the **Federal Register** (41 FR 53077) on December 3, 1976. The State standard revision is contained in AAC 05.190, Underground Construction, and is substantially identical to 29 CFR 1926.800, Underground Construction. The State's amendment was adopted on December 27, 1989, with an effective date of August 10, 1990, after public notification was published in the statewide media on October 25 and November 1, 1989. Public hearings were held on November 28–30, 1989. The public comment period was open for thirty days by Jim Sampson, Commissioner, under authority vested by AS 18.60.020. The State has substituted the words "may" and "must" in its code for the Federal term "shall"; editorial changes have been made to accommodate the State's codification and numbering system. The State also added a requirement to prohibit workers from working alone around drilling equipment. OSHA considers this to be a minor work practice.

In response to a Federal standards change, the State has submitted by letter dated November 21, 1990, from Richard Arab, Acting Director, to James W. Lake, Regional Administrator, and incorporated as part of the plan, a State standard at AAC 05.160, Excavations, comparable to 29 CFR 1926.650, Excavations, as published in the **Federal Register** (54 FR 45959) on October 31, 1989. The State's standard revision was promulgated after notifications were published in the statewide media on February 14 and 21, 1990. Public hearings were held on March 12, 13, and 14, 1990. The public comment period was open for thirty days by Jim Sampson, Commissioner, under authority vested by AS 19.60.020. The State standard revision was adopted on June 7, 1990, with an effective date of September 12, 1990. The following differences are either minor or have been previously approved, as noted: The State requires shoring and protection at the four-foot level and has adjusted other responses and the appendices accordingly; the four-foot requirement received previous **Federal Register** approval (41 FR 53077) on December 3, 1976. In the definition of competent person, the State also requires training and knowledge of soil analysis due to the State's climatic conditions involving permafrost. In addition, the State has substituted State terms for Federal terms as follows: "may not" for "shall not", "must" for "shall"; "use" for "utilization"; and "if" for "when" or "where"; as required by the Alaska State's Attorney General. Editorial changes have been made to accommodate the State's codification and numbering system.

2. Decision

The above State standards amendments have been reviewed and compared with the relevant Federal standards. OSHA has determined that the State standard amendments are at least as effective as the comparable Federal standard amendments, as required by section 18(c)(2) of the Act. OSHA has also determined that the differences between the State and Federal standard amendments are minimal and that the standard amendments are thus substantially identical. OSHA therefore approves the amendments; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approval plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, suite 715, Seattle, Washington 98101–3212; State of Alaska, Department of Labor, Office of the Commissioner, Juneau, Alaska 99802; and the Office of State Programs, Occupational Safety and Health Administration, room N–3476, 200 Constitution Avenue, NW., Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Alaska State Plan as a proposed change and making the Regional Administrator's approval effective up publication for the following reason:

1. The standards are substantially identical to the Federal Standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standard amendments were adopted in accordance with the procedural requirements of State law which included opportunity for public comments and further public participation would be repetitious.

This decision is effective October 9, 1991. (Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Seattle, Washington, this 12th day of February, 1991.

Richard S. Terrill,

Deputy Regional Administrator.

[FR Doc. 91–24312 Filed 10–8–91; 8:45 am]

BILLING CODE 4510–26–M

New Mexico State Standards; Approval

1. Background

Part 1953 of title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act), by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State Plan, which has been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On December 10, 1975, notice was published in the **Federal Register** (40 FR 57455) of the approval of the New Mexico State Plan and the adoption of subpart DD to part 1952 containing the decision.

The New Mexico State Plan provides for the adoption of Federal standards as State standards after:

1. Notice of public hearing published in a newspaper of general circulation in the State at least sixty (60) days prior to the date of such hearing.

2. Public hearing conducted by the Environmental Improvement Board.

3. Filing of adopted regulations, amendments, or revocations under the State Rules Act.

The New Mexico State Plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act.

By letter dated February 7, 1991, from Sam A. Rogers, Bureau Chief, to Gilbert J. Saulter, Regional Administrator, and incorporated as part of the plan, the State submitted State standards identical to 29 CFR 1910.1000, Amendment to Air Contaminants (54 FR 47513, dated 11/15/89); 29 CFR 1910.1001, Amendment to Asbestos (54 FR 52027, dated 12/20/89); 29 CFR 1910.1048, Amendment to Formaldehyde (54 FR 31768, dated 8/1/89); 29 CFR 1910.1450, Occupational Exposure to Hazardous Chemicals in Laboratories (55 FR 3327–3335, dated 1/31/90); 29 CFR 1910.1001, Amendment to Asbestos (55 FR 3731–3732, dated 2/5/90); 29 CFR 1910.1025, Amendment to Lead (55 FR 4999, dated 2/31/90); 29 CFR 1910.1450, Amendment to Occupational Exposure to Hazardous Chemicals in Laboratories (55 FR 7967, dated 3/6/90); 29 CFR 1910, Amendment to Subpart Q—Welding, Cutting and Brazing (55 FR 13696–13711, dated 4/11/90); 29 CFR 1910.120, Amendment to Hazardous Waste Operations and Emergency Response (55 FR 14073–14075, dated 4/13/90); 29 CFR 1910, Amendment to Subpart Q–Welding, Cutting and Brazing (55 FR 25094, dated 6/20/90); 29 CFR 1910, Amendment to Subpart S—Electrical Safety-Related Work Practices (55 FR 32014–32020, dated 8/6/90); 29 CFR 1910.147, Amendment to Control of Hazardous Energy Sources (Lockout/Tagout) (55 FR 38685–38687, dated 9/20/90); 29 CFR 1926.58, Amendment to Asbestos (54 FR 30704–30705, dated 7/21/89); 29 CFR 1926.704, Amendment to Concrete and Masonry Construction (54 FR 41088, dated 10/5/89); 29 CFR 1926, Amendment to Subpart P—Excavations (54 FR 45959–45991, dated 10/31/89); 29 CFR 1926.58, Amendments to Asbestos (54 FR 2827, dated 12/20/89 and 55 FR 3732, dated 2/5/90); and 29 CFR 1926, Revision to Concrete and Masonry Construction, Lift Slab Construction Operations (55 FR 42328–42330, dated 10/18/90).

By letter dated December 14, 1987, from Sam A. Rogers, Bureau Chief, to Gilbert J. Saulter, Regional Administrator, and incorporated as part of the plan, the State submitted its adoption of 29 CFR 1910.1200 and 1926.59, Hazard Communication (52 FR 31877–31886, dated 8/24/87) which contained minor differences from the Federal standard. By letter dated September 12, 1988, from Sam A. Rogers, to Gilbert J. Saulter, the State clarified the meaning of the two slightly different paragraphs.

These standards, contained in New Mexico Occupational Health and Safety Regulations OHSR 200 and OHSR 300, were promulgated on December 14, 1990 and October 8, 1987, in accordance with applicable State law.

The subject standards became effective March 7, 1991 and January 9, 1988, pursuant to New Mexico State Law, section 50–9–1 through 50–9–25.

2. Decision

Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards, and are accordingly approved. OSHA has also determined that the differences between the State and Federal standard for Hazard Communication are minimal and that the State standard is thus substantially identical. OSHA, therefore, approves the State's Hazard Communication standard; however, the right to reconsider this approval is reserved should substantial objections be submitted to the Assistant Secretary.

3. Location of Supplement for Inspection and Copying

A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor–OSHA, 525 Griffin Street, room 602, Dallas, Texas 75202; Occupational Health and Safety Bureau, 1190 St. Francis Drive, room 2200–North, Santa Fe, New Mexico 87502; and the Office of State Programs, 200 Constitution Ave., NW., room 3700, Washington, DC 20210.

4. Public Participation

Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplements to the New Mexico State Plan as proposed changes and making the Regional Administrator's approval effective upon publication for the following reason.

1. The standards were adopted in accordance with the procedural requirements of State law which included public comment, and further public participation would be repetitious.

The decision is effective October 9, 1991.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667)).

Signed at Dallas, Texas, this twenty-first day of June 1991.

Gilbert J. Saulter,

Regional Administrator.

[FR Doc. 91–24313 Filed 10–8–91; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

White House Conference Advisory Committee Meeting

Date and Time: October 23, 1991, 9 a.m. to 10 p.m. October 24, 1991, 9 a.m. to 5:30 p.m., October 25, 1991, 9 a.m. to 4 p.m.

Place: Annapolis Marriott Waterfront, 80 Compromise Street, Annapolis, MD 21401, (301) 268–7555, (800) 831–1000.

Status: All meetings are open.

Matters to be Discussed: Joint National Commission on Libraries and Information Science (NCLIS) and White House Conference on Library and Information Services Advisory Committee (WHCAC) Meeting.

Wednesday, October 23, 1991

—9 a.m.—12 Noon
—Opening Remarks
—Open Discussion of the White House
—Conference (WHC)
—12 Noon—1 p.m.
—Working Lunch
—1 p.m.—4 p.m.
—Staff reports on the WHC
—6 p.m.
—Reception
—7:30 p.m.—10 p.m.
—Working dinner
—Thursday, October 24, 1991
—9 a.m.—12 Noon
—WHC Recommendations
—12 Noon—1 p.m.
—Working lunch
—1 p.m.
—WHCAC meeting adjourns
—2 p.m.—4 p.m.
—NCLIS Committee meetings
—4 p.m.—5:30 p.m.
—Orientation for new Commissioners
—Friday, October 25, 1991
—9 a.m.—12 Noon
—Opening remarks
—NCLIS Committee Reports

—12 Noon—1 p.m.
—Working lunch
—1 p.m.—3:15 p.m.
—WHC Recommendations,
—NCLIS Budget review,
—NCLIS Future Meeting Schedule
—3:15 p.m.—4 p.m.
—Discussion
—New Business
—Old Business
—Public Comment
—4 p.m.
—Adjourn

Persons appearing before, or submitting only written statements to the Advisory Committee, are asked to hand over to the Committee prior to presenting testimony, 25 copies of their prepared statement. This will insure that ample copies are available for NCLIS Commissioners, Members of the Advisory Committee, the attending press and observers.

To request further information or to make special arrangements for handicapped individuals, contact Mark Scully (1–202) 254–5100, no later than one week in advance of the meeting.

Dated: October 2, 1991.

Mary Alice Hedge Reszetar,

Designated Federal Official, NCLIS Associate Executive Director.

[FR Doc. 91–24302 Filed 10–8–91; 8:45 am]

BILLING CODE 7527–01–M

NATIONAL SCIENCE FOUNDATION

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting two notices of information collections that will affect the public. Interested persons are invited to submit comments by November 8, 1991. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357–7335, and to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: Survey of Teacher Enhancement Program Participants.

Affected Public. Individuals.

Responses/Burden Hours. 2,300 respondents; and average of 30 minutes per response.

Abstract. This survey is needed to assess the nature, range, and impact of the Teacher Enhancement Program projects upon their subsequent teaching activities and skills. The Teacher Enhancement Program is a $51 million program that sponsors professional development opportunities for pre-college mathematics and science teachers. Information obtained from this study will be used in conjunction with that obtained from a "sister survey" of Teacher Enhancement Principal Investigators, as well as for program planning within the Division of Teacher Preparation and Enhancement and the Directorate for Education and Human Resources.

Dated: October 3, 1991.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 91–24310 Filed 10–8–91; 8:45 am]

BILLING CODE 7555–01–M

Collection of Information Submitted for OMB Review

In accordance with the Paperwork Reduction Act and OMB Guidelines, the National Science Foundation is posting two notices of information collections that will affect the public. Interested persons are invited to submit comments by November 8, 1991. Comments may be submitted to:

(A) *Agency Clearance Officer.* Herman G. Fleming, Division of Personnel and Management, National Science Foundation, Washington, DC 20550, or by telephone (202) 357–7335, and to:

(B) *OMB Desk Officer.* Office of Information and Regulatory Affairs, ATTN: Dan Chenok, Desk Officer, OMB, 722 Jackson Place, room 3208, NEOB, Washington, DC 20503.

Title: Grants for Research and Education in Science and Engineering. An Application Guide.

Affected Public. Individuals, State and local Governments, businesses and other for-profit, non-profit institutions, small businesses or organizations.

Responses/Burden Hours. 37,000 respondents; and average of 120 burden hours each response.

Abstract. The National Science Foundation supports research in most scientific disciplines, science education and research policy. This support is made through grants, contracts, and other agreements awarded to universities, university consortia, nonprofit, and other research organizations. These awards are based on proposal submitted to the Foundation.

Dated: October 3, 1991.

Herman G. Fleming,

NSF Reports Clearance Officer.

[FR Doc. 91–24311 Filed 10–8–91; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–08572, License No. 20–15102–01, EA 90–065]

P.X. Engineering Company, Inc., Boston, Massachusetts; Order Imposing Civil Monetary Penalty

I

P.X. Engineering Company, Inc., (Licensee) is the holder of License No. 20–15102–01 issued by the Nuclear Regulatory Commission (NRC or Commission) on January 26, 1983. The license authorizes the Licensee to possess and use byproduct material for the conduct of industrial radiography in accordance with the conditions specified therein.

II

An inspection of the Licensee's activities was conducted on June 28–29, 1988. Subsequently, the NRC Office of Investigations performed an investigation of licensed activities. The results of the inspection and investigation indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated February 21, 1991. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations. The Licensee responded to the Notice in a letter, dated April 5, 1991, and in a supplemental letter dated May 29, 1991. In its responses, the Licensee denied the violations. In addition, the licensee requested full remission of the civil penalty if the NRC maintains the violations occurred.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered That:*

The Licensee pay a civil penalty in the amount of $7,500 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in section II above, and

(b) Whether, on the basis of such violations, this Order should be sustained.

Dated at Rockville, Maryland this 1st day of October 1991.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix—Evaluations and Conclusion

On February 21, 1991, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection. P.X. Engineering Company, Inc., responded to the Notice in a letter, dated April 5, 1991, and in a supplemental letter dated May 29, 1991. In its responses, the licensee denies the violations. In addition, the licensee contends that full remission of the civil penalty is warranted if the NRC maintains that the violations occurred. The NRC's evaluation and conclusion regarding the licensee's requests are as follows:

1. Restatement of Violations

A. 10 CFR 34.44 requires that whenever a Radiographer's Assistant uses radiographic exposure devices, uses sealed sources or related source handling tools, or conducts radiation surveys required by 10 CFR 34.43(b) to determine that the sealed source has returned to the shielded position after an exposure, he shall be under the personal supervision of a radiographer. The personal supervision shall include: (a) The radiographer's personal presence at the site where the sealed sources are being used, (b) the ability of the radiographer to give immediate assistance if required, and (c) the radiographer's watching the assistant's performance of the operations referred to in this section.

Contrary to the above, on a number of occasions between November 1987 and June 28, 1988, an individual acted as a Radiographer's Assistant, utilized a radiographic exposure device and was not adequately supervised by a radiographer, in that the radiographer/Radiation Safety Officer (RSO) was not watching the performance of operations including exposure of the source.

B. 10 CFR 30.9 (a) requires, in part, that information provided to the Commission by a licensee, or information required by the Commission's regulations to be maintained by the licensee, shall be complete and accurate in all material respects.

Contrary to the above, information provided by the licensee's RSO during an interview with two NRC inspectors on June 28, 1988, was inaccurate in that the RSO, in response to questions by the inspectors regarding the RSO's personal presence during the performance of radiography by two licensee employees, stated that he was personally present during all radiographic exposures performed by both individuals. This statement by the RSO was not accurate in that the RSO was not personally present at all times on all occasions when one of the individuals performed radiographic exposures. By the admission of the RSO, on a number of occasions between November 1987 and July 1988, he did not observe all radiographic exposures in that he states that he was in his office located approximately 50 feet from the location where the radiography was being performed. This statement was material because it relates directly to an NRC requirement and also because one of the individuals acting as a Radiographer's Assistant had not been given an oral test as required by the licensee's procedures and, had the inspector been aware that this individual was not being adequately supervised by the RSO, the inspector may have determined that this situation had more than minimal safety significance, and significant enforcement action may have been taken against the licensee at that time.

These violations have been categorized in the aggregate as a Severity Level III problem. (Supplements VI and VII).

Cumulative Civil Penalty—$7,500 (assessed $4,500 for Violation A and $3,000 for Violation B).

2. Summary of Licensee's Response Concerning Denial of the Violations

The licensee denies the violations. In doing so, the licensee makes numerous assertions. Of these, the principal ones which appear most directly related to the basis for its actual denial that the violations occurred are summarized as follows: First, the licensee states that the former Radiation Safety Officer (RSO) both performed the supervision specified in the regulation and fulfilled the requirements to prevent unauthorized entry as well as to monitor the areas in accordance with its license. The licensee contends that the subject license requires the Radiographer to control the perimeter of the restricted area (according to the licensee, the office area of PX Engineering at times falls within the restricted area and must be controlled); therefore, the former RSO had to provide personal supervision of the Radiographer's Assistant and also comply with the license which requires direct surveillance of the operation. The licensee further states that the former RSO was always at the site when the sealed source was being used, and was able to provide immediate assistance if needed.

The licensee believes that information provided to the NRC inspectors during the June 29, 1988 inspection was true and accurate as provided by the RSO (an engineer by training and vocation) based on the questions presented to him. In addition, the licensee believes that the explanation provided during the Enforcement Conference of September 11, 1990 regarding the presence and supervision of the Radiographer's Assistant by the RSO confirmed its compliance with the license and regulations.

With respect to corrective actions, the licensee states that the management of the company has always been seriously involved in the radiography program and was concerned with the results of the June 29, 1988 inspection and immediately increased the level of oversight by: (1) Providing additional training for the RSO and ensuring that no radiography operations were performed until the RSO's refresher training was complete; (2) revising the Radiation Safety Manual to add specific limitations on Radiographer's Assistants and auditing of Radiographer and Radiographer's Assistants performance; and (3) commencing unannounced management audits during radiographic operations, including records and personnel. The licensee concluded that the corrective steps that have been taken will avoid any further alleged violations.

NRC Evaluation of Licensee's Response

The NRC does not accept the licensee's contention that the RSO performed the supervision specified in the regulation (10 CFR 34.44) as long as the RSO was in the office area when radiographic operations were being conducted. The requirement for direct surveillance of the operation (required by license condition) and for watching the performance of the operation (required by 10 CFR 34.44) cannot be fulfilled from the RSO's office, which is approximately 50 feet from

the area where radiographic operations are conducted, with an interposed wall that obstructs the view. The above referenced license condition and NRC regulation require a physical presence close to the individual performing the radiographic operation.

The licensee's argument that the RSO had to be in his office to control the perimeter of the restricted area is similarly unpersuasive. All NRC requirements must be met. In situations where radiography must be performed in obstructed areas, this may be accomplished by utilizing additional personnel, locking out areas, etc.

NRC does not agree with the licensee's assertion that the explanation provided during the Enforcement Conference on September 11, 1990, confirmed compliance with the license and regulations. A review of the transcripts of the enforcement conference does not lead the NRC to conclude that compliance with the requirements was achieved; the explanation given at the enforcement conference contradicts the information provided by OI. The RSO, during the transcribed enforcement conference, stated that he was monitoring every radiographic exposure made by the trainee in that, although he may not have been next to the individual cranking out the source, he was watching him from a distance. This statement contradicts the transcribed testimony given to the OI investigator on November 16, 1989 in that, during his testimony, the RSO stated: "He (Radiographer's Assistant) let me know when he was going to be doing radiography. I'd check things. Sometimes I'd see him crank it out, watch him, monitor him there. Some times I didn't."

With respect to the inaccurate information provided to the NRC inspectors by the RSO on June 29, 1988, the licensee's explanation is that the RSO was asked if he was present and responded affirmatively because he was present at the site. The licensee points out that the RSO responded, based on the question presented to him, as an engineer by training and vocation. AS NRC noted in the letter transmitting the February 21, 1991 Notice, the RSO was generally unfamiliar with the relevant NRC requirements and, consequently, NRC found it necessary to issue a Confirmatory Action Letter to assure that the RSO received additional training. While this information may explain the circumstances surrounding the inaccurate information, it does not excuse or forgive the inaccurate information. An RSO familiar with the requirements of 10 CFR 34.44 would have known of the need for a physical presence close to the individual performing the radiographic operation and would have responded accordingly.

3. Summary of Licensee's Request for Remission of the Civil Penalty

The licensee requested remission of the civil penalty based on the aforementioned facts, extenuating circumstances and the large expenditures it has made regarding this matter over the past 2 years, as well as the severe economic hardship which it is experiencing in the current recession. In response to the NRC's request for additional financial information, the licensee provided a supplemental response dated May 29, 1991. The licensee contends it has not "turned a profit" in the past three years and submitted Federal Tax Returns (Form 1120) for fiscal years 1988, 1989, and 1990, as evidence. The licensee cites collusion among two of its key employees for the loss of clients as well as increased costs due to duplicate purchases and theft via falsified shipments. In addition, the licensee states that in 1990, the company incurred rate increases for labor and health insurance, and experienced an unstable work force due to labor market conditions. The licensee concludes that if the civil penalty is imposed, upper management will consider terminating this corporation.

NRC Evaluation of Licensee's Request for Remission

The NRC reviewed the merits of this case and concludes that a basis for mitigation or remission of the civil penalty has not been shown. The mitigation factors set forth in the Enforcement Policy were appropriately considered in the computation of the proposed civil penalty. Specifically, the violations were identified by the NRC, the licensee's corrective actions were not considered prompt, and the mitigation warranted for good performance was offset by the escalation warranted for multiple examples. The licensee's response does not provide any additional information that specifically rebuts the NRC method of determining the amount of the civil penalty.

The NRC has also reviewed the financial information provided by the licensee in the May 29, 1991 letter. The NRC finds that while the licensee may have been experiencing economic hardship and increased operating costs, there is no evidence that payment of this civil penalty would place the licensee in a position where it could no longer remain in business or would substantially affect its ability to safely conduct licensed activities. This conclusion is made based on the fact that the amount of the civil penalty is small in comparison to the total company revenues (as disclosed by the 1988 and 1989 tax returns), as well as the compensation paid to the licensee officers in 1989.

4. NRC Conclusion

The NRC has concluded that the violations occurred as stated in the Notice and that the licensee has not provided an adequate basis for either withdrawal of the violations, or for mitigation of the civil penalty. Consequently, the proposed civil penalty in the amount of $7,500 should be imposed.

[FR Doc. 91-24215 Filed 10-8-91; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-445]

TU Electric Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-87 issued to TU Electric Company (the licensee) for operation of the Comanche Peak Steam Electric Station, Unit 1, located in Somervell County, Texas.

The proposed amendment would revise the acceptance criteria provided in the Technical Specifications for the ECCS pump flow balance test. The purpose of the revision is to allow a throttle valve adjustment which assures the minimum required ECCS flow while preventing the ECCS pumps from exceeding runout limits. The minimum flow values presently included in the Technical Specifications are too high to ensure that runout limits will not be reached.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed change does not involve a significant increase in the probability or consequences of accidents previously evaluated.

The proposed change revises the minimum flow value of certain ECCS injection lines. Because the systems function as accident mitigation systems, adjustments in the operation of these systems will not increase the probability of an accident previously evaluated. In addition, no design, material or construction changes are included in this activity. Thus, no changes have been proposed which affect the probability of an accident.

The primary accidents affected by the reduction in the minimum ECCS flow are the Loss of Coolant Accidents (LOCAs). Evaluations of the analyses of these events have demonstrated that the applicable event acceptance criterion for Peak Cladding Temperature (PCT) continue to be met. The source term for

the analyses of the radiological consequences of a LOCA is predicated on compliance with the PCT acceptance criteria. Because the PCT acceptance criterion is satisfied, there is no effect on the radiological consequences.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not modify any hardware, material or construction. Although the flow limits for the ECCS injection lines are revised, no new failure modes are created for any components, systems or structures. As such, no new accidents are created from any accident previously evaluated.

(3) The proposed change does not involve significant reductions in the margin of safety.

The proposed change impacts safety in two basic ways. First, if the ECCS flow values remain as-is, it is postulated that the centrifugal charging pumps and the safety injection pumps could reach or exceed their runout limits. Although this situation was evaluated and it was concluded that these pumps would perform their safety function for all postulated accidents at CPSES, safety can be enhanced if these pumps are operated in a range that does not reach the runout limits. Such an improvement in safety is the primary purpose of this proposed technical specification change.

Adjusting the operating range of these ECCS injection flow lines results in the second basic impact on safety. In many accident analyses, the assumed ECCS flow will be lower than previously postulated. Although the primary impact is on the LOCA analyses, all affected analyses were assessed.

The margin of safety is the difference between the value of the regulated acceptance limit for a particular parameter and the failure value associated with that parameter. The primary parameter of interest affected by the rebalancing of the ECCS is the PCT calculated in the LOCA analyses. Due to the ECCS rebalancing, the minimum ECCS flow delivered to the Reactor Coolant System during the injection mode of ECCS operation is reduced. As a result, the PCT due to LOCA increases. However, evaluations of the LOCA analyses have been performed which demonstrate that the PCT acceptance limit, defined in 10 CFR 50.46, is not exceeded. Furthermore, because the ECCS flow reduction does not affect the design, material, or construction of the fuel assemblies, there is no effect on the failure limit associated with the fuel. Because neither the PCT acceptance limit value nor the associated failure value is changed, there is no effect on the margin of safety.

Evaluations of the impact of the proposed change on these analyses have demonstrated that the associated acceptance limits are not exceeded.

Furthermore, TU Electric has determined that the reduction in the minimum ECCS flow surveillance criteria allows the ECCS to be balanced such that the pump runout limits will not be exceeded in the recirculation mode. Therefore, the availability of the ECCS pumps during the post-LOCA, long-term recirculation mode of operation is enhanced.

Although the proposed change will result in higher PCT for some accident analyses due to the reduced flow rates, the fact that all accidents continue to provide acceptable results and all parameters of concern continue to meet acceptance criteria when coupled with the clear improvement in safety which results from not exceeding the pump runout limits, leads TU Electric to the conclusion that this proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within thirty (30) days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission , Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 7, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the University of Texas at Arlington, Library, Government Publications/ Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to

intervene which must include a list of the contentions which are sought to get litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30–day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves on significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 325–6000 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Suzanne C. Black: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to George L. Edgar, Esq., Newman and Holtzinger, 1615 L Street, NW., suite 1000, Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 1, 1991, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19497, Arlington, Texas 76019.

Dated at Rockville, Maryland, this 2nd day of October 1991.

For the Nuclear Regulatory Commission.

Thomas A Bergman,

Acting Project Manager, Project Directorate IV–2, Division of Reactor Projects-III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 91–24216 Filed 10–8–91; 8:45 am]

BILLING CODE 7590–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Agency Information Collection Activities Under OMB Review

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the Agency has made such a submission. The proposed form under review is summarized below.

DATES: Comments must be received within 14 calendar days of this notice. If you anticipate commenting on the form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Submitting Officer of your intent as early as possible.

ADDRESSES: Copies of the subject form and the request for review submitted to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

OPIC Agency Submitting Officer

Valerie J. Settles, Office of Personnel and Administration, Overseas Private Investment Corporation, suite 461, 1615 "M" Street, NW., Washington, DC 20527; Telephone (202) 457–7152.

OMB Reviewer

Marshall Mills Office of Management and Budget, New Executive Office Building, Washington, DC 20503; Telephone (202) 395–7340.

Summary of Form Under Review

Type of Request: Extension.
Title: Project Information Report.
Form Number: OPIC–71.
Frequency of Use: On occasion—a function of the sampling criteria.
Type of Respondent: Business or other institutions (except farms).

Standard Industrial Classification Codes: All.

Description of Affected Public: Business and other institutions.

Number of Responses: 25 per year.

Reporting Hours: 5 per application.

Authority for Information Collection: Section 231(k)(2) [title 22 U.S.C. 2191(k)(2)] and 239(h) [title 22 U.S.C. 2199(h)] of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The Project Information Report is necessary to elicit and record the information on the developmental, environmental, and U.S. economic effects of OPIC-assisted projects. The information will be used by OPIC's staff and management solely as a basis for monitoring these projects and reporting the results, as required by Congress, in aggregate form.

Dated: September 30, 1991.

James R. Offutt,

Office of the General Counsel, Assistant General Counsel for Legislative and Administrative Affairs.

[FR Doc. 91–24394 Filed 10–8–91; 8:45 am]

BILLING CODE 3210–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

SUMMARY OF PROPOSAL(S):

(1) *Collection title:* Public Service Questionnaires.

(2) *Form(s) submitted:* G–208, G–212.

(3) *OMB Number:* 3220–0136.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Frequency of response:* On occasion.

(7) *Respondents:* Individuals or households.

(8) *Estimated annual number of respondents:* 7,850.

(9) *Total annual responses:* 7,850.

(10) *Average time per response:* .1541 hours.

(11) *Total annual reporting hours:* 1,210.

(12) *Collection description:* A spouse or survivor annuity under the RR Act may be subjected to a reduction for a public service pension. The questionnaire obtains the information needed to determine if the reduction applies and the amount of such reduction.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 91–24247 Filed 10–8–91; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Boston Stock Exchange, Incorporated

October 3, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Adt, Ltd.
Common Stock, $.10 Par Value (File No. 7–7343)

Adt, Ltd.
American Depository Shares, $.10 Par Value (File No. 7–7344)

Aileen, Inc.
Common Stock, $1.00 Par Value (File No. 7–7345)

International Specialty Products, Inc.
Common Stock, $.01 Par Value (File No. 7–7346)

Intellicall, Inc.
Common Stock, $.01 Par Value (File No. 7–7347)

Illinois Central Corp.
Common Stock, $.001 Par Value (File No. 7–7348)

IMCO Recycling, Inc.
Common Stock, $.10 Par Value (File No. 7–7349)

Ruddick Corp.
Common Stock, $1.00 Par Value (File No. 7–7350)

Spaghetti Warehouse, Inc.
Common Stock, $.01 Par Value (File No. 7–7351)

Carlisle Plastics, Inc.
Class A Common Stock, $.01 Par Value (File No. 7–7352)

Haemonics Corp.
Common Stock, $.01 Par Value (File No. 7–7353)

Kaiser Aluminum Corp.
Common Stock, $1.00 Par Value (File No. 7–7354)

MGIC Investment Corp.
Common Stock, $1.00 Par Value (File No. 7–7355)

National Health Labs
Common Stock, $.01 Par Value (File No. 7–7356)

Preferred Health Care Ltd.
Common Stock, $.01 Par Value (File No. 7–7357)

Universal Health Services
Class B Common Stock, $.01 Par Value (File No. 7–7358)

Vigoro Corp.
Common Stock, $.01 Par Value (File No. 7–7359)

Exel, Ltd.
Ordinary Shares, $.01 Par Value (File No. 7–7360)

These securities are listed and registered on one or more other national securities exchanges and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before October 25, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–24257 Filed 10–8–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29781; File No. SR–ICC–600–21]

Self-Regulatory Organizations; The Intermarket Clearing Corporation; Order Approving a Request for Extension of Temporary Registration as a Clearing Agency

October 3, 1991.

On September 11, 1991, The Intermarket Clearing Corporation ("ICC") filed with the Securities and Exchange Commission ("Commission")

an amendment to its application for registration as a clearing agency requesting that the Commission extend its temporary registration as a clearing agency for a period of eighteen months, until April 3, 1993.[1] Notice of the amendment appeared in the **Federal Register** on September 23, 1991.[2] This order extends ICC'S registration until April 3, 1993.

On October 3, 1988, the Commission granted ICC temporary registration as a clearing agency for a period of eighteen months.[3] On April 5, 1990, the Commission extended ICC's registration until October 3, 1991.[4]

ICC is the commodity clearing subsidiary of The Options Clearing Corporation ("OCC"). ICC originally sought registration with the Commission as a clearing agency in order to hold and control securities options positions in connection with a cross-margining program between ICC and OCC. Subsequently, OCC has established a cross-margining program with the Chicago Mercantile Exchange ("CME") that is structured somewhat differently than the ICC/OCC cross-margining program. ICC staff is currently studying whether to restructure the ICC/OCC cross-margining program to be more similar to the cross-margining program between OCC and CME.

ICC has functioned effectively as a registered clearing agency for the past eighteen months and the Commission believes that ICC continues to satisfy the requirements necessary for registration as a clearing agency as set forth in section 17A(b)(3) of the Act. In light of ICC's past performance and the need for ICC to provide its members continuity of service, the Commission believes there is "good cause" pursuant to section 19 to extend ICC's registration as a clearing agency for an additional eighteen months.

It is therefore ordered, That ICC's temporary registration as a clearing agency be, and hereby is, extended through April 3, 1993, subject to the terms, undertakings, and conditions specified in Securities Exchange Act Release No. 26154.[5]

[1] Letter from James C. Yong, Assistant Secretary, ICC, to Jonathan Kallman, Assistant Director, Division of Market Regulation ("Division"), Commission (September 11, 1991).

[2] Securities Exchange Act Release No. 29696 (September 16, 1991), 56 FR 47975.

[3] Securities Exchange Act Release No. 26154 (October 3, 1988), 53 FR 39556.

[4] Securities Exchange Act Release No. 27879 (April 5, 1990), 55 FR 13342.

[5] *Supra* note 3.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Jonathan G. Katz,

Secretary.

[FR Doc. 91-24301 Filed 10-8-91; 8:45 am]

BILLING CODE 8010-01-M

[6] 17 CFR 200.30-3(a)(50).

[Release No. 34-29768; File Nos. SR-MSE-91-14 and SR-NYSE-91-30]

Self-Regulatory Organizations, Notice of Filing of Proposed Rule Changes by the Midwest Stock Exchange, Inc., and the New York Stock Exchange, Inc. Relating to Proposed Extension of Circuit Breaker Procedures

September 30, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that the Midwest Stock Exchange, Inc. ("MSE") and the New York Stock Exchange, Inc, ("NYSE") (collectively, "the Exchanges") filed with the Securities and Exchange Commission ("Commission") on September 12, 1991, and September 16, 1991, respectively, the proposed rule changes as described in Items I, II and III below, which Items have been prepared by the self-regulatory organizations. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Change

The Exchanges proposed to extend the effectiveness of the "circuit breaker" provisions (NYSE rule 80B and MSE article IX, rule 10A ("circuit breaker rules") for an additional year, until October 31, 1992. A copy of the NYSE's circuit breaker rule is attached as Exhibit A. The MSE's circuit breaker rule is substantially identical to the NYSE's.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the self-regulatory organizations included statement concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organizations have prepared summaries, set forth in section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

The circuit breaker rules provide that if the Dow Jones Industrial Average [1] ("DJIA") falls 250 points or more below its previous trading day's closing value, trading in all stocks on the Exchanges will halt for one hour. It further provides that if on the same day the DJIA drops 400 points or more from its previous trading day's close, trading on the Exchange will halt for two hours.

The circuit breaker rules were enacted in response to studies of the October 1987 market break. Following the market break, numerous market analyses and reports were undertaken. One such report was the Interim Report of the Working Group on Financial Markets issued in May 1988 by the Under Secretary for Finance of the Department of the Treasury and the Chairman of the Commission, the Commodities Futures Trading Commission and the Board of Governors of the Federal Reserve System ("Working Group"). The Working Group recommended "coordinated trading halts and reopenings for large, rapid market declines that threaten to create panic conditions." The Working Group specifically recommended, and the Exchange endorsed, temporary halts in the trading of all stocks, stock options, and stock index options as well as trading of stock futures and options on stock futures when the DJIA reaches certain trigger values, which are more fully discussed below. The Presidential Task Force on Market Mechanisms (the "Brady Commission") also endorsed the concept of coordinated market trading halts.

The Exchanges' circuit breaker rules were approved by the Commission on a pilot basis in October 1988,[2] and were extended for an additional year in October 1989 [3] and again in October 1990.[4] These pilots are due to expire on

[1] "Dow Jones Industrial Average" is a market of Dow Jones & Company.

[2] *See* Securities Exchange Act Release No. 26198 (October 19, 1988), 53 FR 41637 (order approving NYSE circuit breaker proposal); and Securities Exchange Act Release No. 26218 (October 26, 1988), 53 FR 44137 (order approving MSE circuit breaker proposals).

[3] *See* Securities Exchange Act Release No. 27370 (October 23, 1989), 54 FR 43881.

[4] *See* Securities Exchange Act Release No. 28580 (October 25, 1990), 55 FR 45895.

October 31, 1991. Since the original adoption of the rules in 1988, the circuit breakers have not been triggered. The exchanges continues to believe that coordinating trading halts and reopenings during large, rapid market declines is a viable concept, and are, therefore, seeking to extend the effectiveness of the circuit breaker rules for another year, until October 31, 1992.

The Exchanges adopted the circuit breaker rules with the understanding that all United States stock exchanges and the National Association of Securities Dealers would adopt rules or procedures substantively identical to the Exchange's circuit breaker rules with respect to the trading of stocks, stock options and stock index options, and that the Chicago Board of Trade, the Chicago Mercantile Exchange, the Kansas City Board of Trade and the New York Futures Exchange would adopt rules halting the trading of stock index futures and options on such futures contracts under circumstances substantively identical to those contained in the circuit breaker rules. The Exchanges are seeking an extension of the effectiveness of their respective circuit breaker provisions with the understanding that the market centers referred to above will similarly extend the effectiveness of their respective rules, which are substantively identical to the Exchanges' circuit breaker rules.

(b) Statutory Basis

The basis under the Act for the proposed rule changes is the requirement under section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchanges believe that extending the effectiveness of the circuit breaker rules for an additional year is consistent with these objectives in that a trading halt requirement during a period of significant stress can be expected to provide market participants with a reasonable opportunity to become aware of and respond to significant price movements, thereby facilitating in an orderly manner the maintenance of an equilibrium between buying and selling interest.

B. Self-Regulatory Organizations' Statement on Burden on Competition

The Exchanges do not believe that the proposed rule changes will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received from Members, Participants or Others

The Exchanges have neither solicited nor received written comments on the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organizations consent, the Commission will:

(A) By order approve the proposed rule changes, or

(B) Institute proceedings to determine whether proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organizations. All submissions should refer to File Nos. SR-MSE-91-14 and/or NYSE-91-30 and should be submitted by October 30, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Exhibit A—Trading Halts Due to Extraordinary Market Volatility

Rule 80B. If the Dow Jones Industrial Average SM * reaches a value 250 or more points below its closing value on the previous trading day, trading in stocks shall halt on the Exchange and may not reopen for one hour. If, on the same day, the average subsequently reaches a value 400 or more points below the closing value, trading in stocks shall halt on the Exchange and may not reopen for two hours.

Supplementary Material

.10. The restrictions in this Rule 80B shall apply whenever the Dow Jones Industrial Average reaches the trigger values notwithstanding the fact that, at any given time, the calculation of the value of the average may be based on the prices of less than all of the stocks included in the average.

.20. The reopening of trading following a trading halt under this Rule 80B shall be conducted pursuant to procedures adopted by the Exchange and communicated by notice to its members and member organizations.

.30. If the 250-point trigger is reached at or after 3 p.m., or if the 400-point trigger is reached at or after 2 p.m., trading in stocks shall halt for the remainder of the day; provided, however, that if the 250-point trigger is reached between 3 p.m. and 3:30 p.m., or the 400-point trigger is reached between 2 p.m. and 3 p.m., the Exchange may use abbreviated reopening procedures either to permit trading to reopen before 4 p.m. or to establish closing prices.

.40. Nothing in this Rule 80B should be construed to limit the ability of the Exchange to otherwise halt or suspend the trading in any stock or stocks traded on the Exchange pursuant to any other Exchange rule or policy.

[FR Doc. 91-24254 Filed 10-8-91; 8:45 am]
BILLING CODE 8010-01-M

* "Dow Jones Industrial Average" is a service mark of Dow Jones & Company, Inc.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-29772; File No. SR-NASD-91-42]

Self-Regulatory Organizations; Notice of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to the Definition of Branch Office

October 1, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on August 15, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" of "SEC") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD has proposed an amendment to article III, Securities and Exchange Commission 27 of the Rules of Fair Practice to codify the definition of branch office. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Supervision

Section 27 * * *
Definitions * * *

(g)(2) *Branch Office* means any location identified by any means to the public or customers as a location at which the member conducts an investment banking or securities business, excluding:

(i) Any location identified (solely) in a telephone directory line listing or on a business card or letterhead, which listing, card, or letterhead also sets forth the address and telephone number of the branch office or OSJ of the firm from which the person(s) conducting business at the non-branch location are directly supervised [.];

(ii) Any location referred to in a member advertisement, as this term is defined in article III, section 35 of the NASD Rules of Fair Practice, by its local telephone number and/or local post office box provided that such reference may not contain the address of the non-branch location and, further, that such reference also sets forth the address and telephone number of the branch office or OSJ of the firm from which the person(s) conducting business at the non-branch locations are directly supervised; or

(iii) Any location identified by address in a member's sales literature, as this term is defined in article III, section 35 of the NASD Rules of Fair Practice provided that the sales literature also sets forth the address and telephone number of the branch office or OSJ of the firm from which the person(s) conducting business at the non-branch locations are directly supervised.

(g)(3) A member may substitute a central office address and telephone number for the supervisory branch office and OSJ locations referred to in paragraph (g)(2) above provided it can demonstrate to the NASD District Office having jurisdiction over the member that it has in place a significant and geographically dispersed supervisory system appropriate to this business and that any investor complaint received at the central site is provided to and resolved in conjunction with the office or offices with responsibility over the non-branch business location involved in the complaint.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) In 1989, in response to requests from members, a committee of the Board of Governors ("Board") issued several interpretations under article III, section 27(g)(2) of the NASD Rules of Fair Practice, to clarify the rules's definition of branch office and the exemption from branch office registration available for non-branch business locations that meet certain conditions under the rule. These interpretations were reviewed by the Board in November, 1989, and were approved for publication in the NASD Regulatory & Compliance Alert (February 1990). The interpretations were relied upon for more than one year, and were found to be workable in practice. Consequently, the NASD has decided to codify the terms of the interpretations.

The NASD is proposing to codify these interpretations into the definition of branch office by amending subsection (g) of article III, section 27 of the NASD's Rules of Fair Practice. Under the current rule, a location may be exempt from registration as a branch office if it is identified to the public only in telephone book listings, on business cards, or on stationery, that also included the address and telephone number of the branch office or the office of supervisory jurisdiction ("OSJ") responsible for supervising the non-branch business location.

Under proposed subsection (g)(2)(ii), members' advertisements may include a local telephone number and/or a local post office box if the advertisements also identify the location and telephone number of the appropriate supervising branch office or OSJ. These advertisements may not, however, include the address of the non-branch location.

In addition, under proposed subsection (g)(2)(iii), members' sales literature may also include the local address of a non-branch business location, so long as the location and telephone number of the appropriate supervisory branch office or OSJ of the member is identified.

Proposed subsection (g)(3) allows a member to use the firm's main office address and telephone number for reply purposes on sales literature, advertisements, business cards, and business stationery. A member wishing to use the address and telephone number of the main office must demonstrate, however, that it maintains a significant and geographically-dispersed supervisory system appropriate to its business. Moreover, any complaints received by the main office must be forwarded to the office or offices with jurisdiction over the non-branch business location.

The NASD notes that these exemptions from the branch office definition were intended as a reasonable accommodation to member firms with widely dispersed sales personnel selling limited product lines such as variable contracts and mutual funds. Branch office registration would still be required for locations that (i) perform any function under the definition of Office of Supervisory Jurisdiction;[1] (ii) publicly display

[1] Under the NASD Rules of Fair Practice *Office of Supervisory Jurisdiction* means any office of a member at which any one or more of the following

Continued

signage other than on lobby directories or doors in the internal corridors of an office building; (iii) operate from public areas of buildings, such as bank branches, even when such locations are temporarily staffed; or (iv) advertise an address in any public media.

(b) The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act, which requires in pertinent part, that the Association adopt and amend its rules to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect the investors and the public interest, in that it will require that all locations conducting investment banking or securities business be registered and supervised uniformly.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

functions takes place: (i) Order execution and/or market making; (ii) structuring of public offerings or private placements; (iii) maintaining custody of customers' funds and/or securities; (iv) final acceptance (approval) of new accounts on behalf of the member; (v) review and endorsement of customer order, pursuant to article III, section 27(d); (vi) final approval of advertising or sales literature for use by persons associated with the member, pursuant to article III, section 35(b)(1) of the Rules of Fair Practice; or (vii) responsibility for supervising the activities of persons associated with the member at one or more other branch offices of the member.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of the filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by October 30, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 91-24253 Filed 10-8-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29770; File No. SR-NYSE-91-31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Extension of the Effectiveness of Auxiliary Closing Procedures for Expiration Fridays for an Additional Year

October 1, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 12, 1991 the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to extend the pilot program for auxiliary closing procedures utilized on "Expiration Fridays" for market-on-close ("MOC") orders associated with the expiration and settlement of stock index futures, index options, and options on stock index futures.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below and is set forth in sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(a) Purpose

Since September 1986, the Exchange has utilized auxiliary closing procedures on days when stock index futures, stock index options and options on stock index futures (collectively, "derivative instruments") expire or settle concurrently. Since November, 1988, the Exchange has used these auxiliary closing procedures for each monthly expiration Friday. These procedures currently require the entry by 3 p.m. of all MOC orders in positions relating to any strategy involving any index derivative product. The procedures also require the specialist to make public MOC order imbalances of 50,000 shares or more in the so-called pilot stocks [2] as

[1] These procedures were approved by the Commission on a pilot basis for a one year period beginning in November, 1988 and extending through October, 1989, and then were extended for the first time through October, 1990, and again through October, 1991. See Securities Exchange Act Release No. 26293 (November 17, 1988), 53 FR 47599; No. 26408 (December 29, 1988), 54 FR 343 (approving File No. SR-NYSE-88-37); No. 27448 (November 16, 1989), 54 FR 48343 (approving File No. SR-NYSE-89-38); and No. 28584 (October 22, 1990), 55 FR 43427 (approving File No. SR-NYSE-90-49).

[2] The expiration Friday procedures apply to 52 pilot stocks on a list consisting of the 50 highest-weighted Standard & Poor's 500 Index stocks, based on market values, and any of the 20 Major Market Index stocks not among the 50 highest-weighted stocks.

soon as possible after 3 p.m. and then again after 3:30 p.m. Any MOC orders entered after 3 p.m. must offset a published imbalance.

The Commission granted approval of the pilot period for these closing procedures discussed above in Securities Exchange Act Release No. 24608, and first renewed the extension of the pilot for an additional year in Securities Exchange Act Release No. 27448, dated November 16, 1989, and again, until October 31, 1991, in Securities Exchange Act Release No. 28564, dated October 22, 1990.[3] At the time these procedures were filed, the Exchange had hoped that during the pilot year all options and futures markets would base the settlement price of their derivative products on opening, rather than on closing, Exchange prices.

As the settlement price of certain derivative products continues to be based on closing NYSE prices, the Exchange believes it is appropriate to extend the pilot program for auxiliary closing procedures on expiration Fridays for another year. These procedures have proven to be an effective means of reducing some of the excess market volatility which may result from entering MOC orders related to trading strategies involving index derivative products. Accordingly, the Exchange is seeking at this time to continue to use these products on expiration Fridays.

The Exchange continues to believe, however, that concerns about excess market volatility that may be associated with the expiration or settlement of derivative index products would be most appropriately addressed if the expiration or settlement value of *all* such products were based on the NYSE opening rather than the closing price on the last business day prior to the expiration or settlement of the product.

(b) Statutory Basis

The statutory basis under the Act for this proposed rule change is section 6(b)(5), which requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of section 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–91–31 and should be submitted by October 30, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 91–24258 Filed 10–8–91; 8:45 am]

BILLING CODE 8010–01–M

[3] *See* note 1, *supra*.

[4] 17 CFR 200.30–3(a)(12) (1990).

[Release No. 34–29767; File No. SR–PSE–91–09]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Interest on Arbitration Awards

September 30, 1991.

On May 28, 1991, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and rule 19b–4 thereunder,[2] a proposed rule change to amend the PSE's arbitration rules relating to the service of documents and the payment of interest on arbitration awards.

The proposed rule change was noticed in Securities Exchange Act Release No. 29350 (June 20, 1991), 56 FR 29507 (June 27, 1991). No comments were received on the proposed rule change.[3]

Current PSE Rule 12.29(g) provides that arbitrators may award interest as they deem appropriate. This rule also provides that arbitration awards are to bear interest from the date of decision until payment. Current rule 12.29(h) requires the payment of the awards within thirty days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. The PSE proposes to retain the authority in Rule 12.29(g) for the arbitrators to award interest as they deem appropriate but seeks to revise the Rule's requirement for payment of interest on awards from the date of the decision. As amended, Rules 12.29(g) and 12.29(h) would provide that an arbitration award shall bear interest from the date of the award if the award is not paid within thirty days of receipt, if the award is the subject of a motion to vacate which is denied by a court of competent jurisdiction, or as specified by the arbitrator(s) in the award. Rule 12.29 would continue to specify that interest shall be assessed at the legal rate, if any, then prevailing in the state where the award was rendered, or at a rate set by the arbitrators.

The PSE states that the proposed rule change is based on a rule change approved by the Securities Industry Conference on Arbitration ("SICA") at its April 1991 meeting. The PSE states that the proposal was prompted by the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1990).

[3] The portion of the proposed rule change that amended the PSE's rules relating to the service of documents was approved by the Commission on an accelerated basis in Securities Exchange Act Release No. 29350.

potential unfairness in the current arbitration rules resulting to the paying party who may have to pay interest for delays beyond his or her control, *e.g.*, delays in processing and mailing the decision between the Exchange and the arbitrators. Thus, the PSE argues that the proposed rule change is designed to eliminate the unfairness resulting to a party paying the award and to provide an incentive to pay the award within thirty days while still providing the arbitrators with discretion to award interest from the date of the award.

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, section 6(b)(5) of the Act.[4] Section 6(b)(5) of the Act requires that a national securities exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that the PSE's proposed rule change is consistent with the requirements of section 6(b)(5) of the Act in that the amendments should improve the procedures for administering arbitration proceedings. The Commission further believes that the proposed rule change appropriately balances the need to strengthen investor confidence in the arbitration system with the need to maintain arbitration as a form of dispute resolution that provides for the equitable and efficient administration of justice.

The Commission believes that the proposal should further the objectives of section 6(b)(5) of the Act because the proposed amendment is designed to allow a reasonable period of time for administrative processing of award payments without the payment of interest. The Commission also believes that the proposed amendments should eliminate any confusion for paying parties in determining the current amount of interest owed given delays beyond their control, *e.g.*, delays in processing and mailing the decision between the Exchange and the arbitrators. At the same time, the proposal should provide an incentive for the paying party to comply with the payment of the award within thirty days. As a result, the Commission believes that the proposal should encourage prompt payment of arbitration awards and increase confidence in the arbitration process.

[4] 15 U.S.C. 78(f)(5) (1988).

The Commission also believes that it is appropriate for the rule to continue to require that all monetary awards be paid within thirty days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. This provision should preserve the paying party's ability to seek review of the award in court while postponing temporarily the payment of that award under the requirements of the PSE's rule. Conversely, because the proposal provides that an award shall bear interest from the date of the arbitration award if the award was the subject of a motion to vacate that is denied by a court, the proposal should help to protect the payee's interest in the receipt of an arbitration award without unreasonable or unjustifiable delay.

Finally, the Commission believes that it is appropriate to allow arbitrators discretion in awarding interest on the payment of awards from the date of the award. This provision should help the arbitrators to design an award that fully, fairly and promptly compensates a party for economic damages incurred.

The PSE developed these amendments to its arbitration rules through the auspices of the SICA. The securities industry's self-regulatory organizations ("SRO") have worked together over the past twelve years to develop uniform arbitration rules through the SICA, which is comprised of a representative from each SRO that administers an arbitration program,[5] a representative of the securities industry, and four representatives of the public. The Commission was instrumental in promoting the formation of SICA in 1977 and, since that time, has maintained a strong and continual interest in the arbitration rules and procedures in place at the various SROs, including the PSE. As noted above, the proposed amendment to the PSE's arbitration rules is based on a rule change approved by SICA at its April 1991 meeting. The Commission has considered carefully the PSE's proposed rule change to adopt SICA's recent proposal and finds, for the reasons set forth above, that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change is approved.

[5] The SROs that administer an arbitration program are the PSE, the New York, American, Boston, Cincinnati, Midwest, and the Philadelphia Stock Exchanges, the Chicago Board Options Exchange, the National Association of Securities Dealers, and the Municipal Securities Rulemaking Board.

[6] 15 U.S.C. 78s(b)(2) (1988).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 91-24255 Filed 10-8-91; 8:45 am]

BILLING CODE 8010-01-M

[7] 17 CFR 200.30-3(a)(12) (1990).

[Release No. 34-29766; File No. SR-PSE-91-31]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to Constitutional Amendments to Add a Fifth Public Governor to the PSE Board of Governors

September 30, 1991.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 10, 1991, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II and III below, which Items have been prepared by the PSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

The PSE, pursuant to rule 19b-4 of the Act, has submitted a proposed rule change to amend Article II, section 1(a) and Article III, section 2(a) of the PSE Constitution to provide for an additional public Governor on its Board of Governors ("Board").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The PSE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, Article II of the PSE Constitution provides for seventeen elected Governors, of whom four are representatives of the public.[1] The proposed rule change will provide for one additional public Governor, and will thereby increase the total number of elected Governors to eighteen. In approving this constitutional amendment, the Board considered the major contributions of the four current public Governors and their increased time commitment to Exchange matters. The Board noted that the public Governors bring expertise in areas other than securities to the Exchange, for example, technology, finance, and banking. Most significantly, the public Governors represent the impartial interest of the public.

The proposed rule filing is consistent with section 6(b)(3) and section 6(b)(5) of the Act in that it will assure a fair representation of Exchange members in the selection of Governors and administration of Exchange affairs, and is designed to promote just and equitable principles of trade, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PSE does not believe that the proposed amendments impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments Received on the Proposed Rule Change from Members, Participants or Others

The constitutional amendments were approved by the PSE's Board of Governors on July 25, 1991 and were approved by the PSE membership on August 30, 1991 in accorance with Article XVII of the PSE Constitution.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change is concerned solely with the administration of the PSE, it has become effective upon filing pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Securities Exchange Act Rule 19b-4.[2] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW. Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-91-31 and should be submitted by October 30, 1991.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-24256 Filed 10-8-91; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-18342; No. 811-1715]

MONY Variable Account-A; Application

October 3, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: The MONY Variable Account-A ("VA-A").

RELEVANT 1940 ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: VA-A seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The application was filed on November 5, 1990, and amended on April 12, 1991 and August 5, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on October 28, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issues you contest. Serve VA-A with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. VA-A, 1740 Broadway, New York, NY 10019.

FOR FURTHER INFORMATION CONTACT: Thomas Bisset, Attorney (202) 272-2058, or Heidi Stam, Assistant Chief (202) 272-2060, Office of Insurance Products and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. On August 14, 1968, VA-A registered as a management investment company under the 1940 Act by filing a Form N-8A notification of registration and a Form N-8B-1 registration statement pursuant to section 8(b) of the 1940 Act.

2. On October 3, 1968, VA-A filed a registration statement on Form S-5 (File No. 2-30407), pursuant to the Securities Act of 1933 (the "1933 Act"), for certain individual variable annuity contracts which were issued through VA-A's Individual Variable Annuity sub-account ("IVA") by the Mutual Life Insurance Company of New York ("MONY"). On July 16, 1969, VA-A filed another registration statement on Form S-5 (File No. 2-33983), pursuant to the 1933 Act, for certain group variable annuity contracts which were issued through VA-A's Group Variable Annuity sub-account ("GVA") by

[1] The PSE, in 1990, amended its Constitution to add an additional public Governor to its Board and to increase the total number of elected Governors from sixteen to seventeen. See Securities Exchange Act Release No. 27714 (February 20, 1990), 55 FR 6718 (February 26, 1990) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change) (File No. SR-PSE-90-08).

[2] The Commission believes that because the proposed rule change is merely adding one public Governor, it is acceptable to categorize it as concerned solely with the administration of the Exchange. If the PSE in the future would propose to make more substantial changes to its Board composition, then it would have to file a proposed rule change pursuant to section 19(b)(2) of the Act.

MONY. These registration statements were declared effective on June 26, 1969, and on December 18, 1969, respectively. The related public offerings commenced as soon as was practicable after the respective effective dates.

3. VA–A was a separate investment account, under the insurance laws of the state of New York, of MONY. VA–A consisted of two sub-accounts, IVA and GVA.

4. On March 23, 1990, pursuant to an Agreement and Plan of Reorganization (the "Reorganization") VA–A merged with and into Keynote Series Account ("Keynote", File Nos. 811–5457 and 33–19836), an affiliated registered unit investment trust operated by MONY which provided greater liquidity and investment flexibility. The Reorganization had been approved by the members of the committee of VA–A and VA–A's securityholders. The SEC issued an order of exemption in connection with the Reorganization (Investment Company Release No. 17324, issued January 25, 1990).

5. As part of the Reorganization, the assets of VA–A's IVA sub-account were transferred to Keynote's IVA sub-account, the assets of VA–A's GVA sub-account were transferred to Keynote's Equity Income sub-account, and all securityholders of VA–A immediately became securityholders of Keynote. The Keynote sub-accounts each, in turn, invested VA–A's transferred assets in units of the Equity Income Portfolio of the MONY Series Fund (File No. 811–4209), an underlying fund with investment objectives and holdings substantially similar to VA–A's.

6. Due to the Reorganization, VA–A no longer exists as a separate investment account under the insurance laws of the state of New York. VA–A has no securityholders. No assets have been retained by VA–A. There are no debts or other liabilities of VA–A that remain outstanding. The expenses incurred in connection with the Reorganization were absorbed by MONY. None of the expenses was attributable to or paid by VA–A or Keynote.

7. VA–A is not a party to any litigation or administrative proceeding. VA–A is not now engaged nor does it propose to engage in any business activities other than those necessary for the purposes of winding up its affairs. There are no securityholders of VA–A who did not receive a distribution in complete liquidation of their interests.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–24299 Filed 10–8–91; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–18343; No. 811–3307]

MONY Variable Account–B; Application

October 3, 1991.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: The MONY Variable Account-B ("VA–B").

RELEVANT 1940 ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: VA–B seeks an order declaring that it has ceased to be an investment company as defined by the 1990 Act.

FILING DATE: The application was filed on November 5, and amended on April 12, 1991 and August 5, 1991.

HEARING OR NOTIFICATION OF HEARING: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on October 28, 1991. Request a hearing in writing, giving the nature of your interest, the reason for the request and the issue you contest. Serve VA–B with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. VA–B 1740 Broadway, New York, NY 10019.

FOR FURTHER INFORMATION CONTACT: Thomas Bisset, Attorney (202) 272–2058, or Heidi Stam, Assistant Chief (202) 272–2060, Office of Insurance Products and Legal Compliance (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. On October 30, 1981, VA–B registered as a management investment company under the 1940 Act by filing a Form N–8A notification of registration and a Form N–1 registration statement pursuant to section 8(b) of the 1940 Act.

2. VA–B's registration statement on Form N–1, filed on October 30, 1981, also registered, pursuant to the Securities Act of 1933 (File No. 2–76886), certain variable annuity contracts issued through VA–B by the Mutual Life Insurance Company of New York ("MONY"). The registration statement was declared effective on April 30, 1982, and the public offering commenced as soon as practicable thereafter.

3. VA–B was a separate investment account, under the insurance laws of the State of New York, of MONY.

4. On March 23, 1990, pursuant to an Agreement and Plan of Reorganization (the "Reorganization") VA–B merged with and into Keynote Series Account ("Keynote", File Nos. 811–5457 and 33–19836), an affiliated registered unit investment trust operated by MONY which provided greater liquidity and investment flexibility. The Reorganization had been approved by the members of the committee of VA–B and VA–B's securityholders. The SEC issued an order of exemption in connection with the Reorganization (Investment Company Release No. 17324, issued January 25, 1990).

5. As part of the Reorganization, the assets of VA–B were transferred to Keynote's Money Market sub-account and all securityholders of VA–B immediately became securityholders of Keynote. Keynote, in turn, invested VA–B's transferred assets in units of the Money Market Portfolio of the MONY Series Fund (File No. 811–4209), an underlying fund with investment objectives and holdings substantially similar to VA–B's.

6. Due to the Reorganization, VA–B no longer exists as a separate investment account under the insurance laws of the state of New York. VA–B has no securityholders. No assets have been retained by VA–B. There are no debts or other liabilities of VA–B that remain outstanding. The expenses incurred in connection with the Reorganization were absorbed by MONY. None of the expenses was attributable to or paid by VA–B or Keynote.

7. VA–B is not a party to any litigation or administrative proceeding. VA–B is not now engaged nor does it propose to engage in any business activities other than those necessary for the purpose of winding up its affairs. There are no securityholders of VA–B who did not receive a distribution in complete liquidation of their interests.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-24300 Filed 10-8-91; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Bureau of Politico-Military Affairs

[Public Notice 1496]

Suspension of Munitions Export Licenses to Haiti

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that all licenses and approvals to export or otherwise transfer defense articles and defense services to Haiti, including those for use by the police, pursuant to section 38 of the Arms Export Control Act are suspended until further notice.

EFFECTIVE DATE: October 3, 1991.

FOR FURTHER INFORMATION CONTACT: William Robinson, Director, Office of Defense Trade Controls, Bureau of Politico-Military Affairs, Department of State (703-875-6644).

SUPPLEMENTARY INFORMATION: On September 30, 1991, a coup occurred in Haiti ousting the democratically elected President, Fr. Jean-Bertrand Aristide. On October 3, the Organization of American States (OSA) adopted a Resolution calling for the suspension of all "military, police, or security assistance of any kind and to prevent the delivery of arms, munitions or equipment to that country in any manner, public or private." The OAS also encouraged other states to follow suit.

Consistent with the provisions of the OAS Resolution which took effect immediately, it is the policy of the U.S. Government to deny all applications for licenses and other approvals to export or otherwise transfer defense articles and services to Haiti, including those for use by the police, until further notice. In addition, U.S. manufacturers and any other affected parties are hereby notified that the Department of State has suspended all previously issues licenses and approvals authorizing the export of or other transfers of defense articles or services, as well as those for use by the police, to Haiti. On September 30, 1991, Foreign Military Financing (FMF) and International Military Education and Training (IMET) funds to Haiti were also suspended until further notice.

The licenses and approvals that have been suspended include manufacturing licenses, technical assistance agreements, technical data, and commercial military exports of any kind subject to the Arms Export Control Act involving Haiti. This action also precludes the use in connection with Haiti of any exemptions from licensing or other approval requirements included in the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120-130) until further notice.

In accordance with established policy and procedures, exceptions to this policy will be considered on a case-by-case basis.

This action has been taken pursuant to sections 38 and 42 of the Arms Export Control Act (22 U.S.C. 2778, 2791) and section 126.7 of the ITAR in furtherance of the foreign policy of the United States.

Dated: October 3, 1991.

Richard A. Clarke,

Assistant Secretary of State for Politico-Military Affairs.

[FR Doc. 91-24284 Filed 10-8-91; 8:45 am]

BILLING CODE 4710-25-M

Office of Oceans Affairs

[Public Notice 1493]

Shipping Coordinating Committee, Committee on Ocean Dumping; Meeting

The Committee on Ocean Dumping, a subcommittee of the Shipping Coordinating Committee, will hold an open meeting on October 24, 1991 from 10 a.m. to 12 noon to obtain public comment on the issues to be addressed at the Fourteenth Consultative Meeting of Contracting Parties to the London Dumping Convention (LDC), which regulates ocean dumping.

The meeting will be held at the Environmental Protection Agency, Fairchild Building, 499 South Capitol Street, SW., Washington, DC 20003 in the Office of Wetlands, Oceans, and Watersheds Conference Room on the 8th floor.

For further information, please contact Mr. John Lishman or Mrs. Ellen Delaney, Office of Wetlands, Oceans, and Watersheds, telephone 202/260-8448.

September 27, 1991.

R. Tucker Scully,

Director, Office of Oceans Affairs.

[FR Doc. 91-24248 Filed 10-8-91; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended September 27, 1991

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 47756.
Date filed: September 23, 1991.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 510 (Europe-Middle East General Increase Resolution from Saudi Arabia).
Proposed Effective Date: October 1, 1991.

Docket Number: 47757.
Date filed: September 23, 1991.
Parties: Members of the International Air Transport Association.
Subject:
TC12 Reso/P 1352 dated September 16, 1991, South Atlantic-Africa Expedited Reso—002g (r-1)
TC12 Resi/P 1353 dated September 16, 1991, South Atlantic-Europe/Mideast Resos—r-2-076o, r-3-076w.
Proposed Effective Date: November 1, 1991.

Docket Number: 47758.
Date filed: September 23, 1991.
Parties: Members of the International Air Transport Association.
Subject: TC12 Reso/P 1355 dated September 19, 1991, South Atlantic-Africa Expedited Reso—002j (r-1)
TC12 Reso/P dated September 19, 1991, South Atlantic-Europe/Mideast Resos—r-2—002L, r-3—0732
TC12 Reso/P 1346 dated September 16, 1991, South Atlantic-Europe/Mideast Resos—r-4—002n, 4-002n, r-20—087uu.
Proposed Effective Date: January 1/March 15, 1992.

Docket Number: 47759.
Date filed: September 23, 1991.
Parties: Members of the International Air Transport Association.
Subject:
TC2 Reso/P{ 1108 dated September 13, 1991, Within Europe Expedited Resos— r-1 to r-3
TC2 Reso/P 1110 dated September 13, 1991, Within Europe Expedited Resos—r-4 to 4-9
Proposed Effective Date: October 15/16 and January 1, 1992.

Docket Number: 47766.
Date filed: September 25, 1991.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 511.

Proposed Effective Date: October 1, 1991.

Docket Number: 47767.

Date filed: September 25, 1991.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 512—r–1–043, r–3–063, r–2–053, r–4–070uu.

Proposed Effective Date: November 1, 1991.

Docket Number: 47771.

Date filed: September 27, 1991.

Parties: Members of the International Air Transport Association..

Subject: COMP Reso/P 0726 dated September 19, 1991, Composite Resolutions—Part I—R–1 To R–11

COMP Reso/P 0727 dated September 19, 1991, COMP Reso/P 0727 dated September 19, 1991—R–12

COMP Reso/P0728 dated September 19, 1991, Composite Resolutions—Part III— R–13 To R–21

COMP Reso/P 0730 dated September 19, 1991, Composite Resolutions—Part IV—R22 To R–23

COMP Reso/P 0730 dated September 19, 1991—24 To R–26

COMP Reso/P 0731 dated September 19, 1991, Composite Resolutions—Part VI—R–27 To R–34.

Proposed Effective Date: April 1, 1992.

Docket Number: 47772.

Date filed: September 27, 1991.

Parties: Members of the International Air Transport Association.

Subject: TC2 Reso/P 1107 dated September 13, 1991, Within Europe Expedited Resos—R–1 To R–4, intended effective date: November 1/November 25, 1991

TC2 Reso/P 1109 dated September 13, 1991, Within Europe Expedited Resos—R–5 To R–13, intended effective date: October 28/November 1, 1991.

Docket Number: 47773.

Date filed: September 27, 1991.

Parties: Members of the International Air Transport Association.

Subject: Mail Vote 514 (International Priority Service to Iceland)..

Proposed Effective Date: October 15, 1991.

Phyllis T. Kaylor,

Chief, Documentary Services Divisions.

[FR Doc. 91–24229 Filed 10–8–91; 8:45 am]

BILLING CODE 4910–62–M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended September 27, 1991

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.) The due date for answers, conforming applications, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 47764.

Date filed: September 25, 1991.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope; October 23, 1991.

Description: Application of Tower Air, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations applies for an amendment of its certificate of public convenience and necessity to operate scheduled passenger, property and mail air service between points in the United States of America and points in the Federal Republic of Germany.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 91–24228 Filed 10–8–91; 8:45 am]

BILLING CODE 4910–62–M

Federal Highway Administration

Environmental Impact Statement; Lansing, Michigan

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for the proposed construction of a new trunkline (M–2) along West Road, from I–275 easterly to US–24 (Telegraph Road), in Huron and Brownstown Townships, Wayne County, Michigan.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas A. Fort, District Engineer, Federal Highway Administration, 315 W. Allegan Street, Lansing, Michigan 48933, Telephone (FTS) 374–1879 or (Commercial) (517) 377–1879 or Mr. Jan Raad, Manager, Environmental Section, Bureau of Transportation Planning, Michigan Department of Transportation, P.O. Box 30050, Lansing, Michigan 48909, telephone (517) 373–0146.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Michigan Department of Transportation, (MDOT), is preparing an Environmental Impact Statement (EIS) for the proposed expansion and construction of a new trunkline from I–275 to US–24 (Telegraph Road), Wayne County, Michigan. The proposed project is approximately 7.1 miles in length and is needed to accommodate current and future traffic volumes and to improve the operating conditions and safety of the traveling public. The present facility from I–275 to US–24 (Telegraph Road) is two lanes unpaved between Huron River Drive and Inkster Road. From Inkster Road to just east of Telegraph Road the roadway is paved. The speed limit along West Road is estimated to be about 45 mph.

The alternatives under consideration include (1) No Action, (2) the Transportation System Management (TSM)/Low Cost Capital Investment Improvement, and (3) a Four or Six-Lane Boulevard along West Road.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State, and local agencies, and had a Scoping Document attached. Letters have also been sent to organizations and citizens who have previously expressed, or are known to have interest in this proposal to provide them the opportunity to comment. A public information meeting was held on November 8, 1990, to provide the public an opportunity to discuss the proposed action. A public hearing will also be held. Public notice will be given of the time and place of the hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of OMB Circular No. A–95 regarding State and local clearinghouse review of Federal and

federally assisted programs and projects apply to this program.)

James Erikson,

Assistant Division Administrator.

[FR Doc. 91-24320 Filed 10-8-91; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. 91-47; Notice 1]

Receipt of Petition for Determination That Nonconforming 1990 Ferrari Testarossa Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1990 Ferrari Testarossa passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a determination that a 1990 Ferrari Testarossa that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATE: The closing date for comments on the petition is November 8, 1991.

ADDRESS: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. § 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that.

(I) the motor vehicle * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year . . . as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

G&K Automotive Conversion, Inc. of Anaheim, California (Registered Importer No. R-90-007) has petitioned NHTSA to determine whether 1990 Ferrari Testarossa passenger cars are eligible for importation into the United States. Two vehicles which G&K believes to be substantially similar are the 1988 and the 1990 model Ferrari Testarossas that were offered for sale in the United States. These models were manufactured by Ferrari Automobili S.p.A. and were certified as conforming to all applicable Federal motor vehicle safety standards.

The petitioner notes that the agency, on its own initiative, has already made a determination of substantial similarity covering 1988 model Testarossas that Ferrari Automobili S.p.A. did not certify and offer for sale in the United States (55 FR 47418).

The petitioner states that it has carefully compared the 1990 Testarossa that was not certified and offered for sale in the United States with its two U.S.-companion models, and found it to be substantially similar to those vehicles with respect to most applicable Federal motor vehicle safety standards. Moreover, the petitioner asserts that the 1990 Testarossa, as originally manufactured, conforms to many of the Federal motor vehicle safety standards in the same manner as its counterparts that were offered for sale in the United States, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the 1990 model Testarossa is identical to its U.S.-companion models with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence * * * *, 103 Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 105 *Hydraulic Brake Systems,* 106 *Brake Hoses,* 107 *Reflecting Surfaces,* 109 *New Pneumatic Tires,* 112 *Headlamp Concealment Devices,* 113 *Hood Latch Systems,* 114 *Theft Protection,* 115 *Vehicle Identification Number,* 116 *Brake Fluids,* 118 *Power-Operated Window Systems,* 124 *Accelerator Control Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 203 *Impact Protection for the Driver From the Steering Control System,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 211 *Wheel Nuts, Wheel Discs and Hubcaps,* 212 *Windshield Retention,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* and 302 *Flammability of Interior Materials.*

The petitioner also states that the 1990 Testarossa comes equipped with a European exhaust emission control system which is patterned after the system specified by the U.S. Environmental Protection Agency, and that the vehicle's system includes a fuel tank vapor pressure control value that is designed to meet the fuel spillage prevention requirements in a rollover that are specified in Standard 301, *Fuel System Integrity.* Additionally, the petitioner claims that the bumpers on the 1990 Testarossa comply with the Bumper Standard found in 49 CFR part 581.

The petitioner further contends that the vehicle is capable of being readily modified to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment:* (a) Installation of U.S.-model sealed beam headlamps; (b) installation of front and rear sidemarkers; (c) installation of a high-mounted stop lamp.

Standard No. 110 *Tire selection and rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Replacement of both outside rearview mirrors.

Standard No. 208 *Occupant Crash Protection:* Installation of a passive restraint system.

Standard No. 214 *Side Door Strength:* Installation of reinforcing beams.

The petitioner also claims that although the 1990 Testarossa comes equipped with factory-marked parts for theft prevention purposes, a label must be installed on the vehicle to comply

with the Theft Prevention Standard found in 49 CFR part 541.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109. 400 Seventh Street SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered. and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 8, 1991.

Authority: 15 U.S.C. 1397(c)(3)(A)(i) (II) and (C)iii; 49 CFR 593.8; delegation of authority at 49 CFR 1.50.

Issued on October 4, 1991.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 91-24306 Filed 10-8-91; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

October 3, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1160.
Form Number: None.
Type of Review: Extension.
Title: Corporations; Consolidated Returns—Special Rules Relating to Dispositions and Deconsolidations of Subsidiary Stock.
Description: These regulations prevent elimination of corporate-level tax because of the operation of the consolidated returns investment adjustment rules. Statements are required for dispositions of a subsidiary's stock for which losses are claimed, for basis reductions within two years of the stock's deconsolidation, for elections by the common parent to retain the NOLs of a disposed subsidiary, and for elections to apply interim or on-going rules in lieu of certain transitional rules.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 4,000.
Estimated Burden Hours Per Respondent: 2 hours.
Frequency of Response: Other (one time).
Estimated Total Reporting Burden: 8,000 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-24298 Filed 10-8-91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Date: October 2, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0025.
Form Number: IRS Form 851.
Type of Review: Revision.
Title: Affiliations Schedule.
Description: Form 851 is filed by parent corporation for itself and the affiliated corporations in the affiliated group of corporations that files a consolidated return (Form 1120). Form 851 is attached to the 1120. This information is used to identify the members of the affiliated group, the tax paid by each, and to determine that each corporation qualifies as a member of the affiliated group as defined in section 1504.
Respondents: Farms, Businesses or other for-profit.
Estimated Number of Respondents/Recordkeepers: 4,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—12 hours, 12 minutes
Learning the law or the form—24 minutes
Preparing and sending the form to the IRS—37 minutes
Frequency of Response; Annually.
Estimated Total Reporting/Recordkeeping Burden: 52,840 hours.
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91-24532 Filed 10-8-91; 8:45 am]

BILLING CODE 4830-01-M

Public Information Collection Requirements Submitted to OMB for Review

Date: October 1, 1991.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: None.
Type of Review: New collection.
Title: IRS Corporate Trading Partner Survey (Survey to generically profile Fortune 500 companies (for the Electronic Management System).

Description: IRS plans to implement Electronic Data Interchange with its trading partners. To design such a system, IRS needs to profile the various trading partner groups and their motivations to use this exchange. This survey will collect preliminary information from a selected group of large corporations, through the Private Sector Council.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 100.

Estimated Burden Hours per Respondent: 20 minutes.

Frequency of Response: Other (one-time survey).

Estimated Total Reporting Burden: 33 hours.

OMB Number: 1545–0794.

Form Number: None.

Type of Review: Extension.

Title: Penalties for underpayment of Deposits and Overstated Deposit Claims, and Time of Filing Information Returns of Owners, Officers and Directors or Foreign Corporations (LR–311–81 Final (T.D. 7925)).

Description: Section 6046 requires information returns with respect to certain foreign corporations and the regulations provide the date by which these returns must be filed. Section 6656 provides penalties with respect to failure to properly satisfy tax deposit obligations and the regulations provide the method for applying for relief from these penalties.

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 60,000.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 30,000 hours.

Clearance Officer: Garrick Shear (202) 535–4297, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 91–24233 Filed 10–8–91; 8:45 am]

BILLING CODE 4830–01–M

Customs Service

Importation of Convict-Made Goods From the People's Republic of China

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of hearing.

SUMMARY: This document advises the public that the Customs Service intends to conduct a public hearing to obtain any relevant information concerning recent allegations that merchandise is being imported into the United States which was produced in the People's Republic of China by means of convict, forced or indentured labor. Members of the public are invited to appear at the hearing or to submit written statements for the record in lieu of a personal appearance.

DATES: The hearing will take place on November 1, 1991. Written requests to appear at the hearing must be received on or before October 23, 1991. Written submissions following appearance at the hearing and written submissions in lieu of a personal appearance, preferably in triplicate, must be received on or before November 15, 1991.

ADDRESSES: The hearing will commence at 9 a.m. in Hearing Room B, Interstate Commerce Commission Building, 12th Street and Constitution Avenue, NW., Washington, DC. Written requests to appear, and all written submissions for the record if not brought to the hearing, should be submitted to the Import Specialist Division, Office of Trade Operations, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: William Patterson, Office of Commercial Operations (202–566–5865).

SUPPLEMENTARY INFORMATION:

Background

Recent allegations have come to the attention of Customs to the effect that certain merchandise produced in the People's Republic of China is being, or is likely to be, imported into the United States in violation of 19 U.S.C. 1307. To assist Customs in determining whether any such violations are taking place or are likely to take place, Customs has decided to invite the public to provide any information that may be relevant to this matter.

Section 307 of the Tariff Act of 1930, as amended (19 U.S.C. 1307) prohibits the importation and entry of "(a)ll goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions", except in the case of goods, wares, articles, or merchandise mined, produced, or manufactured by forced labor or/and indentured labor which are not mined, produced, or manufactured in such quantities in the United States as to meet the consumptive demands of the United States.

Sections 12.42–12.45 of the Customs Regulations (19 CFR 12.42–12.45) set forth procedures for enforcement of the prohibition contained in section 307. Section 12.42(b) of those regulations permits any person outside the Customs Service to communicate to Customs his belief that merchandise subject to the section 307 prohibition is being, or is likely to be, imported into the United States. Section 12.42(b) further requires that any such communication to Customs must contain or be accompanied by (1) a full statement of the reasons for the belief, (2) a detailed description or sample of the merchandise, (3) all pertinent facts obtainable as to the production of the merchandise abroad, and (4) if the foreign merchandise is believed to be mined, produced, or manufactured with the use of forced labor or indentured labor under penal sanctions, detailed information as to the production and consumption of the particular class of merchandise in the United States and the names and addresses of domestic producers likely to be interested in the matter. Section 12.42(d) requires the Commissioner of Customs to institute an appropriate investigation upon receipt of any communication which complies with the requirements of § 12.42(b), and § 12.42(e) authorizes the Commissioner to direct that merchandise not be released from Customs custody which may fall within the purview of section 307 until such time as a conclusive determination as to the applicability of section 307 is made. If it is finally determined that the merchandise is subject to the provisions of section 307, § 12.42(f) directs that a finding to that effect be published in the Customs Bulletin and in the **Federal Register**.

Announcement of Public Hearing

A public hearing on this matter will be held on November 1, 1991, commencing at 9 a.m. in Hearing Room B, Interstate Commerce Commission Building, 12th Street and Constitution Avenue, NW., Washington, DC, with the Commissioner of Customs or her designee presiding. Parties who wish to be heard must advise the office named above in writing, at least one week in advance of the date of the hearing, of their name and the capacity in which they will appear. Customs may also invite parties

to appear. Oral presentations, which will not be under oath, may be limited as to time depending on the number of parties scheduled to be heard. Parties are encouraged, but not required, to provide written submissions for the record prior to their appearance at the hearing. Although the record of the hearing will be transcribed, all oral presentations must be supported by a written submission. Any person unable to attend may supply information in writing. All written submissions must be addressed as provided above, must be submitted timely, and should include all available information of the type specified in 19 CFR 12.42(b) as described above. Press coverage of the hearing will be permitted.

Dated: October 4, 1991.

Carol Hallett,

Commissioner of Customs.

[FR Doc. 91-24431 Filed 10-8-91; 8:45 am]

BILLING CODE 4820-02-M

Solicitation for Comments on the Testing of Pressed and Toughened (Specially Tempered) Glassware

AGENCY: Customs Service, Department of the Treasury.

ACTION: Request for comments on the testing of pressed and toughened (specially tempered) glassware.

SUMMARY: Customs is soliciting comments of interested parties on the testing of certain articles of glass to ascertain if they have been "pressed and toughened (specially tempered)." These articles are normally imported under Item numbers 7013.29.05, 7013.32.10, 7013.39.10, and 7013.99.20 of the Harmonized Tariff Schedule of the United States (HTSUS).

DATES: Comments must be received on or before November 25, 1991.

COMMENTS: Written comments (preferably in triplicate) may be addressed to and inspected at the Office of Laboratories and Scientific Services, room 7113, 1301 Constitution Avenue, NW., Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Zimmerman, Jr., Office of Laboratories & Scientific Services (202) 566-2446.

SUPPLEMENTARY INFORMATION:

Background

At the present time the U.S. Customs Service employs a four part testing method to determine if certain glassware articles are "pressed and toughened (specially tempered)". These articles are normally imported under Subheading numbers 7013.29.05, 7013.32.10, 7013.39.10, and 7013.99.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Articles of "safety glass, consisting of toughened (tempered) * * * glass" normally imported under Heading 7007 of the HTSUS, e.g., architectural plate glass, vehicle windshields, are not within the purview of this notice. Therefore, Customs is not soliciting information concerning analysis methods for these articles.

Currently, Customs' test protocol includes a dimension test, a thermal shock test, a counter fall test and a center punch test. The dimension test is used to identify glass articles which could not have been pressed. The counter fall and thermal shock tests are used to determine the article's durability (toughened). The purpose of the center punch test is to break the article in order that the broken pieces may be examined for evidence of dicing of crazing (tempered).

Dimension Analysis Test—Using a caliper or similar device, measure the minimum diameter of the mouth, opening, or upper rim of the sample. With the same device, measure the maximum inside diameter.

Thermal Shock Test—Heat sufficient water to boiling in a suitable vessel. Place the empty, dry glassware sample, at room temperature, on a level surface nearby. Rapidly pour boiling water into the sample. Fill to approximately ½" of the upper rim. If breakage does not occur, allow to stand for five minutes, empty, examine for cracks or other damage.

Counter Fall Test—Place the test sample on a level surface 36" to 37" above a vinyl tile floor (or the equivalent). With a gentle sweeping motion, trip the glass off the surface for free fall onto the floor.

Center Punch Test—Set the sample to be tested on a solid, level surface. Place the pointed end of a center punch, vertically, against the inside center bottom or heel. Strike the dull end of the punch with a hammer, using blows of gradually increasing severity, until breakage occurs. The sample should not be forced to break more than once. However, as breakage may continue in storage, it is recommended that a photographic record be made of the breakage pattern and/or typical fragments.

The purpose of this notice is to request interested parties to comment on a proposed change to this protocol and/or submit suggested alternate methods for "pressed and toughened (specially tempered)" glassware that are currently in use in the industry.

Customs plans to change its testing protocol by deleting the counter fall test and altering the thermal shock test. The dimension test and the center punch test will not be changed and will continue to be performed. The counter fall test has proven to be unproductive in most cases, and for this reason it is being deleted. Regarding the thermal shock test, it has been brought to Customs' attention that manufacturers of these glassware articles use more severe parameters for the thermal shock test to analyze these items for quality control purposes. Since Customs has no knowledge of the manufacturing process used to impart the required "toughness" to the imported item, it will be necessary to maintain the center punch test for the purpose of assuring that any toughness or durability imparted to an article is the result of "special tempering" and not some other physical characteristic, e.g., thickness of the glass.

If a sample of glassware submitted to the thermal shock test breaks as a result of the test, Customs will find that the article is not "toughened (specially tempered)" for tariff purposes. In interpreting the center punch test, Customs plans to use the criteria that some dicing or crazing is sufficient to determine that a glass article has been "specially tempered" for tariff purposes. For the purposes of this test, "some" will be considered to be any diced or crazed fragments yielded by the broken sample that is more than just a fugitive diced fragment. A sample must pass both tests in order to be considered "toughened (specially tempered)" for Customs purposes.

Customs proposes that the new parameters for the thermal shock test to be as follows:

Thermal Shock Test—Heat the sample(s) in an oven to 160°C for 30 minutes. Remove 1 sample from the oven and immediately immerse it in a water bath set at 25°C. This effects a 135°C difference in temperature. (Alternate oven and water bath settings are acceptable as long as the 135°C difference in temperature is maintained.)"

Prior to making any final changes in the current U.S. Customs testing procedure, consideration will be given to any written comments, timely submitted, to Customs. This consideration may include a rigorous assessment of any suggested techniques or methods through an interlaboratory testing program.

Comments submitted and the current method used by the U.S. Customs Service will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4) and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Laboratories & Scientific Services, room 7113, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, DC 20229.

Dated: October 3, 1991.

John B. O'Loughlin,

Director, Office of Laboratories and Scientific Services.

[FR Doc. 91-24307 Filed 10-8-91; 8:45 am]

BILLING CODE 4820-02-M

Fiscal Service

[Dept. Circ. 570, 1991—Rev., Supp. No. 2]

Surety Companies Acceptable on Federal Bonds; Termination of Authority: American Southern Insurance Company

Notice is hereby given that the Certificate of Authority issued by the Treasury to American Southern Insurance Company, of Atlanta, Georgia, under the United States Code, title 31, sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 56 FR 30133, July 1, 1991.

With respect to any bonds currently in force with American Southern Insurance Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should not be renewed.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 874–6602.

Dated: September 20, 1991.

Diane E. Clark,

Assistant Commissioner, Financial Information, Financial Management Service.

[FR Doc. 91-24319 Filed 10-8-91; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 196
Wednesday, October 9, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:42 a.m. on Friday, October 4, 1991, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Matters relating to the probable failure of an insured bank.

Matters relating to certain financial institutions.

In calling the meeting, the Board determined, on motion of Director T. Timothy Ryan, Jr. (Office of Thrift Supervision), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Vice Chairman Andrew C. Hove, Jr. and Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

Dated: October 4, 1991.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 91–24428 Filed 10–4–91; 5:07 pm]

BILLING CODE 6714-01-M

COMMITTEE ON EMPLOYEE BENEFITS OF THE FEDERAL RESERVE SYSTEM

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 56 FR 50155, October 3, 1991.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: Approximately 11:00 a.m., Tuesday, October 8, 1991, following a recess at the conclusion of the open meeting.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Consideration of process for selecting an outside auditor for the Office of Employee Benefits.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: October 7, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91–24533 Filed 10–7–91; 3:37 pm]

BILLING CODE 6210-01-M

LEGAL SERVICES CORPORATION

Board of Directors Meeting and Board Forum Notice

TIME AND DATE: _____.

MEETING: A meeting of the Board of Directors will be held on October 20–21, 1991. The meeting will commence at 2:00 p.m. on October 20, 1991 and at 9:00 a.m. on October 21, 1991.

FORUM: A Board Forum will be held on October 20, 1991. The forum will commence at 3:30 p.m.

PLACE: The Portland Regency Hotel, 20 Milk Street, The Ballroom, Portland, Maine 04101, (207) 774–4200.

STATUS OF FOURM: Open. The Board of Directors will convene this forum for the primary purpose of soliciting input on matters related to the provision of legal services from directors of grantees located in the States of Maine, Massachusetts, New Hampshire, Rhode Island, Vermont and Connecticut. However, other interested members of the public are welcome to attend and participate in the forum. No formal agenda will be developed for the forum.

STATUS OF MEETING: Open, except that a portion of the meeting will be closed pursuant to a vote taken by telephone on October 1–7, 1991, during which the specific information contained herein was provided to the members of the Board of Directors. At the closed session, the Board of Directors will hear and consider the report of the General Counsel on litigation to which the Corporation is a party, and will consider, in consultation with its counsel, pending personnel actions and personnel-related rules and practices, including matters related to current investigations being undertaken by the Corporation's Office of the Inspector General. The Board of Directors will also receive and consider a report on current investigations from the Inspector General. Finally, the Board of Directors will consider and vote to approve the minutes of a portion of the closed session of the Board's February 22, 1991 meeting. The closing is authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2), (6), and (10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Sections 1622.5(a), (e), and (h)]. The closing pursuant to the October 1–7, 1991 vote has been certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification is posted for public inspection at the Corporation's headquarters, located at 400 Virginia Avenue, SW., Washington, DC., 20024, in its three reception areas, and is otherwise available upon request.

VOTE TO CLOSE:

VOTE OF OCTOBER 1–7, 1991

Board Member	Vote
Howard Dana, Jr	Yes.
J. Blakeley Hall	Yes.
William Kirk, Jr.	Yes.
Jo Betts Love	Yes.
Guy Molinari	Yes.
Penny Pullen	Yes.
Thomas Rath	Yes.
Norman Shumway	Yes.
Basile Uddo	Yes.
George Wittgraf	Yes.
Jeanine Wolbeck	Yes.

MATTERS TO BE CONSIDERED:

Sunday, October 20, 1991 (2:00 p.m.)

Open Session:

1. Approval of Agenda.
2. Approval of Minutes of September 15–16, 1991 Meeting.
3. Chairman's Report.
4. President's Report.
5. Legislative Report.
6. Inspector General's Report.

Monday, October 21, 1991 (9:00 a.m.)

Closed Session: [2]

7. Consideration of Report by Inspector General on Current Investigations and Other Matters.

[2] It is anticipated that the executive session will conclude at approximately 10:45 a.m. The open session will reconvene immediately thereafter.

8. Consideration of Pending Personnel Actions and Personnel-Related Rules and Practices and Consultation with Board's Special Counsel.
9. Consideration of the General Counsel's Report on Pending Litigation to which the Corporation is a Party.
10. Approval of Minutes of a Portion of the Closed Session of the Board of Directors February 22, 1991 Meeting.

Open Session:

11. Consideration of Supplemental Report on the Competition Study.
12. Consideration of Report by Staff on the Status of Applications for Migrant Funding.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 863–1839.

Date Issued: October 7, 1991.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 91–24506 Filed 10–7–91; 2:26 pm]

BILLING CODE 7050–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 4:00 p.m., Thursday, October 17, 1991.

PLACE: Doubletree Inn, Two Warren Place, 6110 South Yale, Tulsa, Oklahoma 74136, (918) 495–1000.

STATUS: Open.

BOARD BRIEFINGS:

1. Insurance Fund Report.
2. Legislative Update.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Central Liquidity Facility Report and Review of CLF Lending Rate.
3. Final Rule: Part 709, NCUA's Rules and Regulations, Liquidation of FCUs and Adjudication of Creditor Claims Involving Federally Insured CUs in Liquidation.
4. Fiscal Year 1992 Overhead Transfer Rate.
5. Final Rule: Part 703, NCUA's Rules and Regulations, Investment and Deposit Authority.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 91–24514 Filed 10–7–91; 3:41 pm]

BILLING CODE 7535–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 9:30 a.m., Tuesday, October 15, 1991.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, D.C. 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeetings.
2. Administrative Action under Section 206, 208, and 307 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. Administrative Actions under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
4. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (7), (8), and (10).
5. Administrative Action under Section 201 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682–9600.

Becky Baker,

Secretary of the Board.

[FR Doc. 91–24515 Filed 10–7–91; 3:41 pm]

BILLING CODE 7535–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Wednesday, October 16, 1991.

PLACE: Ballroom Area (2nd Floor), L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW., Washington, DC 20024.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5461A—Aircraft Accident Report: Runway Collision of USAir Flight 1493, Boeing 737–300, and Skywest Flight 5569, Fairchild Metroliner at Los Angeles International Airport, Los Angeles, California, February 1, 1991.
5563—Recommendations to FAA: Conspicuity of Aircraft on Airport Surfaces, Pilot Vigilance in Monitoring Air Traffic Communications, and Use of Clear and Concise Standard Phraseology Regarding Intersection Takeoffs and "Position-and-Hold" Clearances.

NEWS MEDIA CONTACT: Ted Lopatkiewicz—Phone (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: October 4, 1991.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 91–24507 Filed 10–7–91; 2:26 pm]

BILLING CODE 7533–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Amendment to Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 56 FR 48609, September 25, 1991.

PREVIOUSLY ANNOUNCED DATES OF MEETING: October 7–8, 1991.

CHANGE: Add the following to the open meeting agenda:

4. Officer Compensation. (Mr. Frank)

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268–4800.

David F. Harris,

Secretary.

[FR Doc. 91–24481 Filed 10–7–91; 12:15 pm]

BILLING CODE 7710–12–M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:18 p.m. on Tuesday, October 1, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider: (1) The resolution of failed thrift institutions; (2) environmental impact on real estate sales; and (3) sale of assets.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Robert L. Clarke (Comptroller of the Currency), and concurred in by Chairman L. William Seidman and Director T. Timothy Ryan Jr. (Director of Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsection (c)(4), (c)(8), (c)(9)(A)(ii), (c)(9)(B) and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550-17th Street, NW., Washington, DC.

Dated: October 3, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91–24427 Filed 10–4–91; 5:11 pm]

BILLING CODE 6714–01–M

federal register

Wednesday
October 9, 1991

Part II

Environmental Protection Agency

40 CFR Parts 257 and 258
Solid Waste Disposal Facility Criteria; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

[EPA/OSW-FR-91-004 FRL-4011-9]

40 CFR Parts 257 and 258

Solid Waste Disposal Facility Criteria

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency today is promulgating revisions to the Criteria for Classification of Solid Waste Disposal Facilities and Practices set forth in 40 CFR part 257. These revisions were developed in response to the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act (RCRA). Today's rule adds a new part 258, which sets forth revised minimum federal criteria for municipal solid waste landfills (MSWLFs), including location restrictions, facility design and operating criteria, ground-water monitoring requirements, corrective action requirements, financial assurance requirements, and closure and post-closure care requirements. The rule establishes differing requirements for existing and new units (e.g., existing units are not required to remove wastes in order to install liners). In addition, today's rule amends part 257 by making conforming changes that make it consistent with the new part 258. The specific criteria by which State programs will be approved will be published in a separate rule, which is expected to be proposed in early 1992.

This rulemaking also fulfills a portion of EPA's mandate under section 405(d) of the Clean Water Act (CWA) to promulgate regulations governing the use and disposal of sewage sludge. Part 258 of today's rule is co-promulgated under the authority of the CWA and applies to all MSWLFs in which sewage sludge is co-disposed with household wastes. A separate regulation for sludge monofills (landfills in which only sewage sludge is disposed of) was proposed on February 6, 1989, under part 257 and part 503. The sludge monofill regulations are expected to be finalized by the end of 1991.

EFFECTIVE DATE: October 9, 1993, except subpart G of part 258 is effective April 9, 1994.

ADDRESSES: The public record for this rulemaking (docket number F-91-CMLF-FFFFF) is located at the RCRA Docket Information Center, (OS-305), U.S. Environmental Protection Agency Headquarters, 401 M Street, SW., Washington, DC 20460. The public docket is located at EPA Headquarters and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Appointments may be made by calling (202) 475-9327. Copies cost $0.15/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (800) 424-9346, toll-free, or (703) 920-9810, local in the Washington, DC, metropolitan area.

For more detailed information on specific aspects of this final rule, contact Allen Geswein, Paul Cassidy, or Andrew Teplitzky, Office of Solid Waste (OS-301), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260-1099.

SUPPLEMENTARY INFORMATION: Copies of the following document are available for purchase through NTIS, U.S. Department of Commerce, Springfield, Virginia 22161, 1 (800) 553-6847 or (703) 487-4650:

(1) U.S. EPA, Office of Solid Waste, December 1990 Regulatory Impact Analysis (RIA) and the August 1991 Addendum for the Final Criteria for Municipal Solid Waste Landfills—(40 CFR part 258)—Subtitle D of the Resource Conservation and Recovery Act (RCRA). August 1991.

Preamble Outline

I. Authority

Today's rule is being promulgated under the authority of sections 1008, 2002 (general rulemaking authority), 4004, and 4010 of the Resource Conservation and Recovery Act of 1976, as amended. Section 1008 directs EPA to publish guidelines for solid waste management, including criteria that define solid waste management practices that constitute open dumping and are prohibited under subtitle D of RCRA. Section 4004 further requires EPA to promulgate regulations containing criteria for determining which facilities are open dumps. Section 4010, added by the Hazardous and Solid Waste Amendments of 1984 (HSWA), directs EPA to revise the criteria promulgated under section 1008 and 4004 for facilities that may receive hazardous household waste (HHW) or small quantity generator (SQG) hazardous waste.

The part 258 regulations are also being promulgated under the authority of section 405 of the CWA and will apply to municipal solid waste landfills in which sewage sludge is disposed of together with household wastes ("co-disposed sludge"). Section 405(d) requires EPA to establish sewage sludge use and disposal standards for the toxic pollutants in sewage sludge adequate to protect public health and the environment against reasonably anticipated adverse effects of the pollutants. Section 405(e) prohibits any person from disposing of sludge from a publicly-owned treatment works (POTW) or other treatment works treating domestic sewage except in accordance with the section 405(d) regulations. The regulations promulgated here today will fulfill EPA's CWA requirement to establish standards for sewage sludge that is co-disposed with municipal solid waste.

II. Background

A. Current Solid Waste Controls Under RCRA and the CWA

1. RCRA Subtitle D Criteria

Subtitle D of RCRA establishes a framework for Federal, State, and local government cooperation in controlling the management of nonhazardous solid waste. The Federal role in this arrangement is to establish the overall regulatory direction, by providing minimum nationwide standards for protecting human health and the environment, and to provide technical assistance to States for planning and developing their own environmentally sound waste management practices. The actual planning and direct implementation of solid waste programs under subtitle D, however, remain largely State and local functions, and the act authorizes States to devise programs to deal with State-specific conditions and needs. EPA retains the authority to enforce the appropriate standards in a given State.

Under the authority of sections 1008(a)(3) and 4004(a) of subtitle D of RCRA, EPA first promulgated the Criteria for Classification of Solid Waste Disposal Facilities and Practices (40 CFR part 257) on September 13, 1979. These subtitle D Criteria establish minimum national performance standards necessary to ensure that "no reasonable probability of adverse effects on health or the environment" will result from solid waste disposal facilities or practices. A facility or practice that meets the Criteria is classified as a "sanitary landfill." A facility failing to satisfy any of the Criteria is considered an "open dump" for purposes of State solid waste management planning. State plans developed pursuant to the Guidelines for Development and Implementation of State Solid Waste Management Plans (40 CFR part 256) must provide for closing or upgrading all existing open dumps within the State.

Practices not complying with the Criteria also constitute "open dumping" for purposes of the Federal prohibition on open dumping in section 4005(a). EPA does not have the authority to enforce the prohibition directly (except in situations involving the disposal or handling of sludge from publicly-owned treatment works, where Federal enforcement of POTW sludge-handling facilities is authorized under the CWA). However, the "open dumping" prohibition may be enforced by States and other persons under section 7002 of RCRA.

The existing part 257 Criteria include general environmental performance standards addressing eight major topics: Floodplains (§ 257.3–1), endangered species (§ 257.3–2), surface water (§ 257.3–3), ground water (§ 257.3–4), land application (§ 257.35), disease (§ 257.3–6), air (§ 257.3–7), and safety (§ 257.3–8).

2. Sewage Sludge Criteria

The existing part 257 Criteria discussed above were co-promulgated under joint authority of RCRA and section 405(d) of the CWA. The part 257 regulations thus apply to all sludge disposed of on land. Under section 405(e), it is unlawful to dispose of sludge for any use for which regulations have been established under the CWA except in accordance with these regulations.

In February 1987, Congress enacted the Water Quality Act of 1987, which amended portions of the CWA, including section 405. First, Congress expanded section 405(d) to impose new standard-setting requirements with associated deadlines. Second, Congress established new sludge permitting requirements in section 405(f) along with State program requirements.

EPA has proposed sludge regulations under section 405(d), published at 40 CFR parts 257 and 503, on February 6, 1989 (54 FR 5746–5902). The proposed part 503 regulations would establish standards for the incineration, land application, and distribution and marketing of sludge. They also would establish standards for sludge disposed of in monofills, which are landfills in which only sewage sludge is disposed of (i.e., no other type of solid waste is co-disposed with the sewage sludge) and in surface disposal units (sludge placed on the surface of the land in piles). The sludge proposal does not include standards for the co-disposal of sewage sludge with household wastes in municipal solid waste landfills. Rather, those standards for the co-disposal of sewage sludge and household wastes in landfills are established in today's final rule. By this action, the Agency seeks to achieve consistency in its regulation under two legal authorities of a single disposal practice—the co-disposal of sewage sludge and other solid wastes in municipal solid waste landfills.

B. Report to Congress on Solid Waste Disposal

In response to the 1984 Hazardous and Solid Waste Amendments, EPA completed a study on the adequacy of the existing Criteria to protect human health and the environment from all subtitle D facilities, except those addressed in other EPA reports to Congress, such as mining waste facilities. In conducting the study, EPA gathered detailed data on the characteristics and quantities of nonhazardous solid wastes, including municipal solid wastes. In addition, EPA evaluated the characteristics and potential human health and environmental impacts of solid waste disposal facilities. Finally, the Agency reviewed the Federal and State solid waste regulatory programs to identify

any areas of inadequacy. In October 1988, EPA submitted the results of the study to Congress in a report entitled, "A Report to Congress: Solid Waste Disposal in the United States." (Ref. 1) The preamble to the August 30, 1988 proposal of this rule (53 FR 33314) contained a discussion of the findings of this study.

The results of this study confirmed that the United States is in the midst of a municipal solid waste disposal crisis. EPA's most recent data show that in 1988 the nation generated nearly 180 million tons of municipal solid waste and that this quantity would likely grow to 216 million tons by the year 2000. This growing volume of waste is coupled with a steadily decreasing availability of disposal capacity. In a 1986 EPA survey (Ref. 2), 45 percent of the municipal solid waste landfill owners/operators reported that their landfills would reach capacity by 1991. Today's disposal capacity crisis is further compounded by the difficulty in siting new solid waste management facilities.

C. EPA Concerns Regarding Local Government and Indian Tribe Impacts

The municipal solid waste crisis comes at a time when local governments and Indian Tribes are faced with a wide range of competing demands for their limited financial and technical resources. Schools, roads, social programs, public health and environmental programs, including solid waste management, and other programs draw on limited local resources, forcing cities and Tribes to make tough budget decisions. EPA recognizes and is very sensitive to these difficult conditions that local governments and Indian Tribes face and is carefully considering the impacts of its environmental programs on local governments and Indian Tribes.

As part of this effort, EPA carefully considered the concerns of local government and Indian Tribes in today's rule for municipal solid waste landfills. Within the constraints established by Congress, EPA has provided in this rule extensive flexibility to States, Indian Tribes, and local governments to facilitate implementation. For example, today's rule sets forth a set of flexible, national performance standards that allow owners and operators, including local governments and Indian Tribes, to consider site-specific conditions in designing and operating their landfills to comply with the rule. Today's rule also establishes a flexible compliance schedule, including the phase-in of ground-water monitoring requirements over a five-year period from the date of publication of today's rule. Finally, as discussed later in this preamble, today's rule provides special relief to small communities and Indian Tribes. Municipal solid waste landfills that serve small communities and Indian Tribes which meet certain criteria are exempted from certain high-cost requirements (See § 258.1(f)).

EPA also is stepping up its efforts in providing technical assistance to local governments on municipal solid waste management issues. As discussed in the next section, the Agency has developed a national strategy for addressing the nation's municipal solid waste problem that calls for action by all levels of government, industry, and the general public. In implementing this strategy, EPA has worked with the States in launching numerous new technical assistance programs aimed at local governments. For example, EPA issued a wide range of information materials on topics such as recycling and siting of solid waste management facilities, which are critical to local governments. EPA plans to continue to work with States in providing this much-needed assistance to local governments.

D. EPA's Solid Waste "Agenda for Action"

In response to the growing national concern about the solid waste disposal crisis, EPA developed a national strategy for addressing the municipal solid waste management problems. This strategy is set out in a document entitled, "The Solid Waste Dilemma: An Agenda for Action," (Ref. 3) which the Agency issued in final form in February 1989. The strategy describes a wide range of activities that must be undertaken by various parties, including government, industry, and the general public, to bring our municipal solid waste management problems under control. EPA expects to issue an update of the Agenda in the near future.

The cornerstone of the strategy is "integrated waste management," where the following solid waste reduction and management options work together to form an effective system: source reduction, recycling, combustion, and landfilling. In keeping with the Agency's policy of pollution prevention, which is discussed below, the strategy strongly encourages the use of source reduction (i.e., reduction of the quantity and toxicity of materials and products entering the solid waste stream) followed by recycling as first steps in a solid waste management system. These techniques can then be complemented by environmentally sound combustion and landfilling.

The strategy sets out three national goals for municipal solid waste management: (1) Increase source reduction and recycling; (2) increase disposal capacity and improve secondary material markets; and (3) improve the safety of solid waste management facilities. To promote the attainment of the first goal, EPA established a national goal of 25 percent source reduction and recycling of municipal solid waste by 1992.

EPA's "Agenda for Action" identifies a series of actions or activities that must be carried out to achieve the above national goals. These activities seek to (1) increase the amount of information available to all parties on municipal solid waste management; (2) increase effective integrated waste management planning by local governments, States, Indian Tribes, and industry; (3) increase use of source reduction; (4) increase recycling; and (5) improve the design and management of municipal waste combustors and landfills.

EPA has made significant progress in completing the activities and attaining the national goals outlined in the "Agenda for Action." The following describes some of the most significant actions EPA has completed in implementing the "Agenda for Action."

1. Increasing Information

The Agency has completed numerous educational materials and programs aimed at assisting State and local governments and others in dealing with municipal solid waste management problems. For example, EPA issued the first volume of the "Decision Makers Guide to Solid Waste Management," (Ref. 4) which provides essential information on all aspects of solid waste management for local government officials. The Agency also published a comprehensive bibliography of information on municipal solid waste management and a guide to public involvement in siting municipal solid waste management facilities. In addition, EPA has established an information clearinghouse and peer matching program (through which experienced solid waste professionals provide assistance to their peers). In February 1989, the Agency held a national conference to identify and discuss municipal solid waste research needs.

EPA is continuing to develop additional information materials and programs. For example, EPA sponsored a major national conference on municipal solid waste management in June 1990. The conference addressed solid waste management issues of national importance and worked to increase awareness of these issues at

local, State, and regional levels. The goal of the conference was to initiate partnerships among peers in government, and involve groups and individuals to encourage cooperation and innovation in our efforts to solve solid waste problems. Specific areas addressed at the conference included: (1) Integrated waste management, (2) source reduction and reuse, (3) recycling, (4) combustion, (5) land disposal, and (6) public education and involvement. A second national conference is planned for June of 1992.

The Agency also established SWICH (Solid Waste Information Clearinghouse), a national clearinghouse for municipal solid waste management that contains over 7,000 documents. This system is an electronic bulletin board that allows users to view the listings of journals, reports, studies, etc., to search for topics and also contains information on how to order publications. Furthermore, the Agency will soon release a "how to" manual for setting up household hazardous waste collection programs.

2. Improving Integrated Waste Management Planning

A major objective of EPA's "Agenda for Action" was to improve integrated waste management planning by States and local governments. EPA has made significant progress in achieving this objective. In April 1989, EPA, in cooperation with the National Conference of State Legislatures, held a workshop for States on solid waste management planning. In addition, through a grant to the Council of State Governments, EPA sponsored a series of five workshops on planning for States in the fall of 1989. Finally, with the Conference of Mayors, EPA produced a television video for The Learning Channel on integrated waste management.

3. Increasing Source Reduction

The highest priority in EPA's strategy for addressing the nation's solid waste problems is increasing source reduction. EPA has taken several steps to promote the reduction of the quantity and toxicity of materials entering the municipal solid waste stream. First, EPA convened, through a grant to the Conservation Foundation, a steering committee of national source reduction experts to evaluate and develop recommendations on specific opportunities for source reduction, methods for evaluating source reduction, and incentives for promoting source reduction. The results of this project were recently published in a report entitled, "Getting at the Source: Strategies for Reducing Municipal Solid Waste" (Ref. 5). The Agency also completed a review and analysis of economic incentives, including volume-based pricing schemes, to promote increased source reduction.

With regard to toxicity reduction, EPA completed a report identifying the sources of lead and cadmium in the waste stream (Ref. 6) and will soon issue a report identifying potential substitutes for these constituents in products. The Agency is currently examining mercury in the municipal waste stream. In March 1990, the Agency also completed a comprehensive report to Congress on methods for managing plastic wastes (Ref. 7). This report examined the full range of options for addressing plastic wastes, including source reduction.

4. Increasing Recycling

To increase recycling nationwide, EPA has undertaken a number of efforts to stimulate markets for secondary materials; promote increased separation, collection, processing, and recycling of waste; and establish a National Recycling Institute. In the area of markets for secondary materials, EPA produced a report examining disincentives to recycling and has conducted a series of market studies on various components of municipal solid waste (paper, glass, aluminum, tires, and compost). To improve Federal procurement of recycled materials, the Agency finalized four procurement guidelines (retread tires, building insulation products, paper and paper products containing recovered materials, and lubricating oils containing re-refined oil) in 1988 and 1989 and has begun examining future candidate materials (other building and construction materials) for additional procurement guidelines.

To promote increased, environmentally sound recycling of waste, EPA has launched a training program to support recycling. This program is developing training and assistance programs for recycling at Federal offices and, through the assistance of the State of New Jersey, is developing training materials for training State and local recycling coordinators. EPA also released publications on a number of topics (i.e., used oil recycling, yard waste composting, office paper recycling, and State and local recycling program experiences) and funded development of several public service announcements on recycling. EPA also funded the establishment of a National Recycling Institute, composed of high-level representatives from business and industry, to identify and resolve issues in recycling.

5. Improving Municipal Waste Combustion

In the past year, EPA took a major step forward in improving the design and management of municipal waste combustion facilities. In December 1989, the Agency proposed new air emission standards (54 FR 52209) for new and existing municipal waste combustors. The Agency published a final municipal waste combustion rule on February 11, 1991 (see 56 FR 5488) that included requirements for good combustion practices and air emission control of particulates, organics, NOx and acid gases.

6. Improving Municipal Solid Waste Landfilling

Today's final rule represents the culmination of a major Agency effort to improve the safety of municipal solid waste landfills. EPA issued a comprehensive proposal (summarized below) in 1988 (53 FR 33314), evaluated extensive comments, and is today promulgating the final rule. The Agency believes today's rule will significantly improve the safety of existing and future municipal solid waste landfills.

While today's final rule is comprehensive, it does not address potential concerns regarding air emissions from municipal landfills. To address concerns, the Agency proposed air emission controls for municipal landfills under the authority of section 111 of the Clean Air Act. (See 56 FR 24468; May 30, 1991.)

E. Summary of Proposed Rule

As indicated above, the 1984 Hazardous and Solid Waste Amendments (HSWA) required EPA to revise the existing solid waste disposal criteria for facilities that may receive household hazardous waste or hazardous waste from small quantity generators. The existing criteria were issued under section 4004(a) of RCRA, which specified that the criteria were to provide that a facility be classified as a sanitary landfill and not an open dump only if there is no reasonable probability of adverse effects on human health and the environment from disposal of solid waste at the facility. HSWA specified that the revised criteria shall be those necessary to protect human health and the environment and may take into account the practicable capability of owners and operators of solid waste disposal facilities.

In response to this mandate, in August 1988 EPA proposed revised criteria for

MSWLFs and new information requirements for owners and operators of industrial solid waste disposal facilities and demolition debris landfills. These are landfills that the Agency determined do or may receive household hazardous waste or hazardous waste from small quantity generators. The key provisions of the proposed revised Criteria for MSWLFs are summarized below. Today's rulemaking sets forth the final requirements for owners and operators of these facilities, including the flexibility provided to States seeking to tailor standards to meet State-specific conditions.

EPA's 1988 proposal set forth new requirements pertaining to MSWLF location, design and operation, ground-water monitoring, corrective action, closure and post-closure care, and financial responsibility. The proposed location restrictions identified six locations in which MSWLFs would be subject to special siting restrictions and performance standards: proximity to airports, 100–year floodplains, wetlands, fault areas, seismic impact zones, and unstable areas.

The design criteria proposed by EPA required owners and operators to design MSWLFs to meet a performance standard based on a State-specified ground-water carcinogenic risk level. The proposed operating criteria specified day-to-day operating practices, like daily cover, for proper landfill maintenance.

The Agency also proposed ground-water monitoring and corrective action requirements that established a ground-water monitoring system for detection of releases from landfills and corrective measures for remedying releases once they had been detected. The proposed closure and post-closure care criteria established final cover requirements and a closure performance standard and required a minimum of 30 years of post-closure care of the landfill. The proposed financial responsibility requirements specified that owners and operators must assure that funds would be available to meet closure, post-closure care, and corrective action needs.

EPA received written comments on the proposal from more than 350 commenters. The commenters included more than 130 local governments, about 60 State agencies, and 15 Federal agencies. About 80 private sector firms and 27 trade or professional organizations supplied comments. Ten environmental and/or other public interest groups and 33 private citizens commented on the proposal. In addition, EPA held four public hearings, in which commenters presented oral and written testimony. All comments were taken into consideration in developing this final rule.

Section III of the preamble, which immediately follows, sets forth the statutory basis for the final rule, describes the broad regulatory options considered, and summarizes the regulatory impact analysis. Section IV responds to general issues raised by commenters on the proposal. Sections V and VI of today's preamble summarize the major provisions of parts 257 and 258, respectively. Section VII reviews the steps that owners and operators and States must undertake to implement today's rule, while Section VIII describes EPA's plans for training on the final rule. The technical appendices provide more detailed discussion of the technical components of today's rule. Responses to comments that are not discussed in the preamble of today's rule are contained in the Comments Response Documents cited in Section X.

III. Regulatory Approach of Today's Final Rule

A. Statutory Basis

Prior to evaluating the appropriate regulatory options for the subtitle D revised Criteria, it was necessary that the Agency determine the precedential effect of the RCRA subtitle C requirements for hazardous waste facilities. These regulations are found, for the most part, at 40 CFR part 265 (interim status facilities) and 40 CFR part 264 (permitted facilities).

The Agency received many comments critical of the proposed Criteria based upon the fact that the Criteria varied from those applicable to hazardous waste facilities under RCRA subtitle C. Several commenters based their comments upon technical information contained in the docket to this rulemaking showing many similarities in the health and environmental threats posed by MSWLFs and subtitle C landfills. Like the proposed Criteria, the revised Criteria promulgated today also differ from the subtitle C requirements. EPA believes that Congress did not intend for EPA to copy the subtitle C regulations for subtitle D facilities and, furthermore, gave the Agency the discretion, through its statutory mandate, to create a separate regulatory program.

EPA agrees with commenters that data available to the Agency at this time do not provide strong support for distinguishing the health and environmental threats posed by MSWLFs and subtitle C facilities. Technical data gathered by the Agency and available in the docket to this rulemaking do not reveal significant differences in the number of toxic constituents and their concentrations in the leachates of the two categories of facilities. One study (Ref. 8) compared (1) leachates from MSWLFs that began operation before 1980 (the year EPA's regulations for hazardous waste landfills became effective) with leachates from MSWLFs that began operations after 1980 and (2) "post-1980" MSWLF leachates with hazardous waste landfill leachates. MSWLFs that began operation prior to 1980 could contain industrial hazardous waste that, starting in 1980, could only be sent to a subtitle C facility. MSWLFs that began operation after 1980 should only contain small quantity generator and household hazardous wastes in addition to nonhazardous wastes.

As commenters noted, the study did not find significant differences between the number of toxic constituents and their concentrations between leachates from post-1980 MSWLFs and leachates from pre-1980 MSWLFs and hazardous waste landfills. When comparing the mean concentrations of leachates from hazardous waste facilities and MSWLFs, for example, the Agency concluded that there was a "weak indication" in the data that hazardous waste leachate had higher concentrations of hazardous constituents than post-1980 MSWLF leachate.

It should also be noted, however, that these data are variable, and did not reflect long-term monitoring results. As a result, there is a significant possibility that they do not accurately reflect the actual toxicity of MSWLFs and subtitle C leachates at the present time. Furthermore, the Agency has many reasons to believe that the quality of the leachate from MSWLFs will improve over time. Increasingly, communities are instituting household hazardous waste programs and removing toxics from waste prior to its disposal in a municipal landfill. In addition, the Agency expects there to be positive changes in leachate resulting from the 1986 lowering of the cut-off levels for small quantity generator waste and the addition of new RCRA hazardous waste listings and characteristics. The former would reduce the amount of small quantity generator hazardous waste that may be disposed of in MSWLFs while the latter would divert waste currently disposed of at subtitle D facilities to subtitle C facilities. Each of these measures should reduce both the number and the concentration of toxic constituents present in landfill leachates. Thus, better data as well as future data should

provide a stronger technical basis for distinctions between the subtitle C and D regulatory programs.

In raising the similarity in leachates between MSWLFs and hazardous waste facilities, commenters suggested that EPA is legally obligated to promulgate revised Criteria for MSWLFs under subtitle D that are similar to existing regulatory standards for subtitle C hazardous waste facilities. The basis for such a suggestion is that the Agency may not distinguish regulatory standards under subtitles C and D except on technical grounds.

The Agency disagrees with commenters that it is legally obligated to issue revised Criteria for MSWLFs under subtitle D that are identical to subtitle C standards and believes that it has the discretion to create a different regulatory program for MSWLFs. Because this discretion is based upon the statutory language and legislative history of the RCRA provision requiring EPA to promulgate the revised Criteria, the current lack of technical information distinguishing the two universes of solid waste facilities does not affect the Agency's discretion to create two distinct regulatory programs.

The statutory language and legislative history of RCRA subtitle D reveal that Congress mandated a different standard of health and environmental protection from that mandated under subtitle C and that Congress did not intend for EPA to impose the same standards under the two programs. Subtitle C management standards for hazardous waste treatment, storage, and disposal facilities shall be those "necessary to protect human health and the environment." (See, for example, section 3004(a).) Section 4010(c) of the statute, the provision mandating promulgation of the revised Criteria, also contains this same language:

> Not later than March 31, 1988, the Administrator shall *promulgate revisions of the criteria promulgated under paragraph (1) of section 4004(a)* and under section 1008(a)(3) for facilities that may receive hazardous household wastes or hazardous wastes from small quantity generators under section 3001(d). *The criteria shall be those necessary to protect human health and the environment and may take into consideration the practicable capabilities of such facilities* (emphasis added).

However, while stating that the revised Criteria must be those "necessary to protect human health and the environment," subtitle D contains additional language not present in subtitle C, that allows the Agency to explicitly consider practicable capability in determining what is necessary to protect human health and the environment.

This discretion is found both in the language of section 4010(c), which explicitly provides that EPA may consider the "practicable capability" of facilities in revising the solid waste management criteria promulgated under section 4004(a), and in the language of section 4004(a) itself. EPA believes that these provisions, among other things, explicitly authorizes EPA to consider cost in determining appropriate criteria for subtitle D facilities. The legislative history of section 4010(c) as well as other statutory provisions further support this interpretation.

Section 4004(a) provides that EPA shall promulgate regulations containing criteria distinguishing which facilities are to be classified as sanitary landfills and which as open dumps. This provision incorporates a distinctly different standard of health and environmental protection, which may be interpreted to allow consideration of cost. The section provides that, at a minimum:

> * * * a facility may be classified as a sanitary landfill and not an open dump only if there is *no reasonable probability of adverse effects on health or the environment* from disposal of solid waste at such facility (emphasis added).

The statute suggests that the standard under section 4004(a) applies to the revised Criteria mandated under section 4010(c). Section 4010(c) explicitly states that the Administrator is to "promulgate revisions of the criteria promulgated under paragraph (1) of section 4004(a) and under section 1008(a)(3)" for subtitle D facilities that may receive hazardous wastes.[1] Thus, rather than simply directing the Agency to promulgate criteria for solid waste landfills receiving household hazardous and small quantity generator wastes, Congress directed the Agency to "revise" the existing Criteria promulgated under section 4004(a) for these facilities. Furthermore, Congress indicates in section 4005 of the statute that the revised Criteria mandated by section 4010(c) are to be promulgated under section 4004(a). Section 4005(c)(1)(B) states:

> Not later than eighteen months after the promulgation of revised criteria under subsection 4004(a) (as required by section 4010(c)), each State shall adopt and implement a permit program or other system or prior approval and conditions * * *.

Thus, the Agency believes that when promulgating revisions of criteria under the same statutory provision, it is reasonable for it to refer to the standards imposed under that statutory section in developing the revisions.

The above statutory argument is supported by the legislative history of section 4010(c). In enacting section 4010(c), Congress seems to have been aware that the costs of the regulation may cause many facilities to close. As a consequence, the legislative history suggests that Congress authorized EPA to develop regulations that would avoid massive closures among solid waste disposal facilities. Senator Randolph, in his remarks during floor debate, stated:

> (t)he requirements could also precipitate the closure of facilities with substantial capacity, but that are either unable or unwilling to accept new regulatory costs.
>
> By allowing the administrator to consider the practicable capability of solid waste disposal facilities, the Congress has expressed its desire to avert serious disruptions of the solid waste disposal industry.

130 Cong. Rec. S 13814 (daily ed. Oct. 5, 1984). From these statements, it would appear that Congress explicitly authorized EPA to consider costs under section 4010(c) as a criterion for determining if the financial impact upon the owner or operator of an MSWLF could result in the "serious disruptions within the solid waste disposal industry."

While the legislative history of the Hazardous and Solid Waste Amendments of 1984 discusses the meaning of the term "practicable capability" under section 4010(c) and indicates that it refers to cost considerations, the legislative history does not elaborate upon the meaning of section 4004(a) phrase, "no reasonable probability of adverse effects." However, case law provides support for interpreting this standard to allow EPA to consider cost.

Although it alone is not interpreted to imply economic considerations, the term "reasonable," present in section 4004(a), has been read in other contexts to imply a balancing of competing factors. (*See e.g., American Textile Manufacturers Institute, Inc.* v. *Donovan*, 452 U.S. 490 (1981); *City of New York* v. *EPA*, 543 F. Supp. 1084 (S.D.N.Y. 1981).) The legislative history indicates that Congress recognized cost versus health and environmental protection to be the competing considerations in revising the subtitle D Criteria. (*See e.g.*, 130 Cong. Rec. S 13814 (daily ed. Oct. 5, 1984)).

Furthermore, use of the word "probability" in "no reasonable

[1] Section 1008 simply requires that the Administrator promulgate solid waste management information and guidelines.

probability" implies the discretion to impose requirements that are less certain to eliminate a perceived health or environmental threat than standards that are "necessary to protect human health and the environment," thus allowing for the consideration of other factors such as cost.

Based upon these considerations, EPA believes it has the explicit discretion to interpret the phrase "practicable capability" under section 4010(c) to allow the consideration of the cost of the revised criteria to MSWLF owners and operators.

The legislative history supports the above statutory reading that EPA may impose different standards under RCRA subtitle D from those imposed under RCRA subtitle C. In the Senate Report to S.757, Congress, in discussing EPA's mandate in revising the subtitle D criteria for MSWLFs, stated:

> (t)he multiple liner-leachate collection system requirements of new section 3004(f) applicable to Subtitle C facilities are not to be automatically incorporated in revised criteria for landfills or surface impoundments which are Subtitle D facilities.

S. Rept. 98–248 at 50. Senator Stafford, in his remarks on the Senate floor, also provided for the possibility of differences between the subtitle D and C standards. He stated:

> (t)he underlying standard for facilities subject to this amendment to subtitle D remains protection of human health and the environment. Requirements imposed on facilities may vary from those for Subtitle C facilities, however, and still meet this standard.

130 Cong. Rec. at S 13814.

Finally, two aspects of the nature of Congress' regulation of MSWLFs containing household or small quantity generator hazardous waste support a Congressional intent to preserve differences between the RCRA solid and hazardous waste programs. First, Congress chose to regulate such facilities by revising the subtitle D criteria rather than subjecting them to the subtitle C requirements. Second, Congress' statutory directives in the HSWA amendments to revise the subtitle D criteria lack the prescriptiveness of similar amendments to the subtitle C program. In place of Congress' imposition of land disposal restrictions and precise liner and leachate collection requirements in the 1984 amendments, Congress merely told EPA to revise the Criteria under section 4004(a) as necessary to protect human health and the environment, taking into consideration practicable capability. Furthermore, Congress specified only the "minimums" of such a program, mandating that the revised criteria include requirements for ground-water monitoring, location standards, and corrective action.

As a consequence, EPA has determined that it has the discretion to create a regulatory program for RCRA subtitle D MSWLFs that would allow for standards that are distinct from the RCRA subtitle C program for hazardous waste facilities, and thus EPA can allow for greater flexibility in State solid waste programs.

B. Regulatory Options Considered and Summary of the Regulatory Impact Analysis

The Agency considered a number of broad regulatory options for today's final rule and, in accordance with Executive Order 12291, prepared a Regulatory Impact Analysis (RIA), December 1990, that evaluates the benefits and impacts of each of the regulatory options. The RIA also contains an analysis of the economic impact on small communities, as required by the Regulatory Flexibility Act (RFA). Complete information on RIA methodology, data, assumptions, and results is contained in the Final Regulatory Impact Analysis. Information on the availability of the RIA is provided in the Supplementary Information Section of today's preamble.

In addition to the RIA, in Spring 1991, the Agency updated and revised the Regulatory Impact Analysis to incorporate changes in state regulations as of January 1991 and to represent the increased flexibility of today's rule, referred to as the Hybrid approach. These changes in assumptions, result in a significant reduction in risk, cost and economic estimates for all options considered. Results from this revised analysis are presented below and are presented in the Addendum to the RIA, August 1991. Information on the availability of the Addendum is provided above.

The Agency considered, in addition to the original proposal, four broad regulatory options for today's final rule. These options included (1) the "Limited Option approach" (2) the "subtitle C, approach" (3) the "Hybrid approach," and (4) the "Categorical approach." Under the limited option approach, the revised Criteria would be limited to the enumerated requirements identified by the 1984 Hazardous and Solid Waste Amendments—location restrictions, ground-water monitoring, and corrective action for ground-water contamination. Rather than focusing on preventing environmental contamination in the first instance, this option relies almost exclusively on detection and expensive clean-up programs to protect human health and the environment. Other than location restrictions, owners or operators of MSWLFs would not be required to comply with any preventive measures such as proper landfill design, operation, and closure.

Under the "subtitle C" option, owners and operators of MSWLFs would be subject to a comprehensive set of facility requirements identical to those established for hazardous waste disposal facilities under subtitle C of RCRA. The final "Hybrid" option, which is the approach taken in today's final rule, combines the limited option provisions with a range of preventive measures appropriate for MSWLFs and provides States seeking to accept the program with the flexibility to adopt the preventive measures most appropriate to their State. In particular, the Hybrid approach addresses all of the categories of control included in the subtitle C option, but is less stringent and, therefore, more flexible in several respects, most notably in the landfill design and closure requirements. Thus, while differing in content, both the Hybrid and subtitle C options include requirements relating to facility location, design, operation, ground-water monitoring, corrective action, closure and post-closure care, and financial assurance.

Finally, EPA investigated a fourth approach, the categorical approach, whereby landfill design standards would be categorized based on various factors, particularly hydrogeology and precipitation. During rule development, EPA and the States attempted to develop such an approach. The approach was rejected by both Agency research and technical staff, and by the States, because it was technically infeasible to tailor categories to the wide variety of situations throughout the country. All attempts to simplify the categories led to over or under regulation. Each attempt suffered from a variety of technical deficiencies. Because the Agency rejected the categorical approach, this approach will not be discussed further in this preamble. Rather EPA's evaluation of this option is addressed in the detailed background discussion on the design criteria presented in Appendix E to today's preamble. In addition, the Regulatory Impact Analysis results for

this approach are not presented in this section because they are very similar to the Hybrid option.

In evaluating these options, the Agency's primary criterion was meeting the statutory requirement of protection of human health and the environment. In addition, consistent with the Agency's interpretation of the statutory basis for today's rule, EPA considered the practicable capability of owners and operators of MSWLFs. From the legislative history, as explained previously in this preamble, EPA determined that "practicable capability" includes both the economic and technical capabilities of owners and operators, which, if exceeded, could result in significant disruptions in current solid waste disposal practices. Because the subtitle C Approach was significantly more expensive that than the hybrid approach (four times higher), EPA determined that it was beyond the bounds of "practicable capability." For this reason, while full discussion of the subtitle C option is included in the RIA, it will not be included in the following discussion on costs and benefits. Additional information on the subtitle C approach can be found in the RIA.

In evaluating and selecting the regulatory approach for today's rule, EPA attempted to strike the most appropriate balance between considerations of human health and environmental protection and practicable capability. EPA gathered and analyzed available informaion on the health and environmental benefits and the cost and economic impacts of the various options.

1. Risk and Resource Damage Analysis

The Agency first evaluated the human health and resource damage benefits of each of the options. Where possible, the Agency developed quantitative estimates of these benefits. For example, the Agency estimated the reduction in carcinogenic health risks achieved and resource damage avoided by the various options. EPA also carefully considered and qualitatively evaluated other benefits that are difficult to quantify, such as the intrinsic value of clean ground water to future generations; non-quantified benefits are discussed in the next section.

There are several limitations to the benefits analysis that should be recognized. Only benefits concerning ground-water contamination are considered—benefits from increased protection of surface water and air are not included. Benefits beyond 300 years are also not included—additional benefits would be captured if the modeling period extended beyond 300 years. Finally, potential changes in waste toxicity and demographics are not completely factored into the analysis—a reduction in toxicity of waste going to MSWLFs would reduce the benefits of this rule, while increases in populations living near MSWLFs would increase benefits.

EPA found that both options, the Final Rule and the limited option would achieve roughly similar results for one benefit measure—reduction in human health risks from drinking contaminated ground water. As indicated in Table 1, both the Hybrid approach and the limited approach would eliminate 2 cancer cases (40 percent reduction from baseline) occurring over 300 years from one set of 3,000 replacement landfills similarly located to those now operating in the U.S.

As EPA predicted, the baseline of 5.7 cancer cases caused by one set of 3,000 replacement MSWLFs is low. This low predicted cancer incidence is due to several reasons. First, more than half (54 percent) of the landfills have no population living within a mile radius, and therefore, in this analysis, were assumed to present no human health risks. Second, EPA modeled human health risk by using the average population density near MSWLFs (i.e., 1.6 people per acre). Risk will increase if population living near landfills increases, as is very likely in the future. Third, EPA modeled risk using median leachate concentrations. If EPA had used the 90th percentile of leachate concentration in this analysis, the human health risk estimates would have increased by a factor of ten. Therefore, while near-term human exposure to contaminated ground water is clearly a concern for a portion of MSWLFs, the larger benefit of the MSWLF rule is preventing ground-water contamination that could lead to human exposure in the future, and avoiding loss of ground-water resources. Fourth, EPA assumed over half of the new landfills will be designed with liners due to current state requirements. Risk reduced by state requirements is considered baseline reductions and is not included in this analysis. The inclusion of regionalization, state requirements and increased flexibility of the rule are the major reasons the number of cancer cases are reduced from those reported in the RIA.

TABLE 1.—PREDICTED POPULATION RISK [1] ACROSS ONE SET OF REPLACEMENT MSWLFs [2] 30-YEAR POST-CLOSURE CARE PERIOD

Regulatory scenario	Total cancer cases for one set of replacement MSWLFs	Reduction of cases
Baseline	5.7	[3] NA
Hybrid Approach	3.3	2.4
Limited Approach	3.3	2.4

Regulatory scenario	Average annual cancer cases caused by one set of replacement landfills over 300 years [4]	Reduction of average annual cases
Baseline	.02	[3] NA
Hybrid Approach	.01	.01
Limited Approach	.01	.01

[1] Population risk over the 300-year simulation.
[2] Note that these numbers represent risk generated only from 20 years of landfilling modeled over 300 years. They do not represent the total risk of landfilling in perpetuity and, therefore, are not comparable to the annualized cost numbers (which represent landfilling in perpetuity) presented later in this section.
[3] Not applicable.
[4] These estimates are the total cancer cases caused by one set of new landfills divided by 300 years. EPA does not believe that those numbers are not comparable to the annualize costs estimates presented later in this section.

An alternative way to consider benefits is to look at long-term protection of both human health and the environment, i.e., prevent resource damage. EPA measured a surrogate of this resource damage by estimating the gross cost of replacing contaminated ground water at drinking wells with an alternative water supply system. (EPA recognizes that this estimate, since it is "gross costs" may be overstated; "net costs" would be somewhat lower.) Since this measure assumes that contaminated water is not used, but replaced (and therefore no human exposure occurs), this measure is not additive to the risk analysis presented earlier. It is simply a second method for measuring benefits. The Agency determined that the hybrid option would provide more effective, long-term protection (prevent resource damage) than the limited approach. Specifically, as shown in Table 2, the Agency found that the Limited option avoided less than half ($120 million) in gross resource damages than the final rule ($270 million).

TABLE 2.—TOTAL RESOURCE DAMAGES FOR ONE SET OF REPLACEMENT LANDFILLS [1]

[Present value in millions of dollars]

Regulatory scenario	Resource damage	Resource damage avoided
Baseline	$560	[2] NA
Hybrid Approach	290	$270
Limited Approach	440	120

[1] Assumes 20 year life span for landfills.
[2] Not applicable.

2. Other Benefits

EPA believes there are several benefits to using the hybrid approach other than the risk and resource damage benefits which were quantified in the RIA. First, EPA believes that the promulgation of federal municipal solid waste landfill criteria will increase public confidence that landfills are designed to protect human health and the environment. EPA believes that this increased confidence will reduce opposition to landfills and make the siting of new landfills less difficult.

Second, EPA's modeling indicates that contamination of ground water will occur at a large portion of landfills if no controls are used. While the resource damage measure presented earlier (the cost of replacing contaminated ground water for those who use it) helps quantify the lost use value of a groundwater resource, EPA believes it does not always reveal the total extent of ground-water contamination or the true impacts of that contamination. For instance, ground-water contamination has, in some communities, resulted in decreased property values. EPA believes that the final rule, by limiting contamination of ground water from landfills will protect property values located within the vicinity of new landfills. Also, there is a value that people place on pristine (non-contaminated) resources, even if they do not intend to use these resources. This value is called a "non-use value," or an "existence value." By limiting releases to the environment, EPA believes that the final rule will protect the existence value of ground water near landfills. EPA has not quantified these benefits for this rule, but is investigating these benefits of protecting ground-water and will include an analysis of these benefits for the final Corrective Action rule to be promulgated under RCRA subtitle C.

Finally, other benefits are expected from the final rule. These include minimizing the need for future cleanups and thus reducing potential economic impacts on future generations (or the federal government, as in the case of a Superfund site). The final rule, by more fully reflecting the cost of safe waste disposal, will also lead to more responsible waste management practices and promote resource conservation.

3. Costs and Economic Impacts

The Agency evaluated costs by: (1) Using the subtitle D risk model to determine design requirements for landfills under the performance-based options and to determine which landfills would trigger corrective action and (2) using the subtitle D cost model to estimate cost.

Costs are estimated for a single set of landfills which in theory could be built at precisely the same types of locations as the 6,000 MSWLFs estimated to exist in EPA's 1986 survey. EPA has not estimated the social opportunity cost of premature closure of municipal solid waste landfills. Thus, to the extent that any of the alternative regulatory scenarios cause landfills to be closed prior to the expiration of their expected useful lifetimes, EPA's estimates do not take these costs into account. Likewise, EPA did not estimate any benefits resulting from premature closure of landfills.

Compliance costs in the RIA are estimated for two scenarios: the upper-bound assumes a 40-year post-closure care period (PCC); the lower-bound assumes a 10-year PCC period, increased recycling, shifts of waste to combustion, and regionalization of small landfills. However, the Agency believes that actual costs and economic impacts of the rule will fall somewhere between the upper and lower bounds presented in the RIA. For this reason, the Addendum results (which are discussed here) presents cost and impacts for one scenario only: a best estimate which assumes partial regionalization, shifts of waste to recycling and combustion, and a split between the use of a 10 meter and a 150 meter point of compliance. In addition, changes were made to the RIA analysis to incorporate state credits (i.e., if a provision is required by state regulations, costs are not assigned to the federal options) and better represent increased flexibility in the final rule.

The Agency's best estimate for total annualized cost of the Hybrid approach is $330 million (see Table 3). These costs fall in the lower end of the range of estimated costs for the other regulatory scenarios. For example, the annualized costs for the subtitle C approach is estimated to be close to $1.3 billion while the costs for the limited option is $180 million. Meeting design standard and ground-water monitoring requirements are the major cost elements of both the Hybrid and subtitle C approaches. Corrective action and ground-water monitoring account for the majority of costs under the limited option.

The total present value cost of one set of new landfills (Table 3), as opposed to annualized costs of landfilling in perpetuity, is another way to present costs. The risk and resource damage estimates presented earlier are "total" estimates for one set of new landfills and thus are parallel to the total present value cost estimates presented in Table 3.

TABLE 3.—SUMMARY OF COMPLIANCE COSTS FOR OPTIONS BEST ESTIMATE

	Total annualized ($ in millions)	Average [1] cost per ton	Total present value [2] cost of one set of new landfills ($ in billions)
Hybrid approach	$330	$2	$5.8
Subtitle C	1,300	7	22.9
Limited approach	180	1	2.7

[1] The average cost per ton is a national weighted average figure determined by dividing total national costs by total annual tons disposed.
[2] The total present value cost for one set of new landfills presents costs of the rule in a format comparable to the risk and resource damage estimates presented earlier in the preamble. These costs do not include increased diversion of waste due to combustion and recycling because the risk and resource damage estimates (Tables 1 & 2) do not take into account this additional diversion.

The average annualized incremental cost per ton under the Hybrid approach is less than $2 per ton, compared to $7 per ton for the subtitle C approach and $1 per ton for the Limited option (see Table 3). To put these figures in perspective, the current average cost for disposal of municipal solid waste is $46 per ton. Therefore, a $2 per ton increase for the Hybrid option represents a four percent increase over current baseline costs.

The maximum and minimum cost per ton presented in Table 4 give an indication of the distribution of costs across landfills within each option. While all options have a minimum cost per ton of $1, the maximum costs per ton vary.

TABLE 4.—RANGE OF INCREMENTAL COST PER TON ACROSS OPTIONS

	Minimum cost [1]	Maximum cost [2]
Hybrid approach	$1	$24
Subtitle C approach	1	92
Limited approach	1	20

[1] The minimum cost represents costs at large landfills located in States that already have groundwater monitoring and design requirements.

[2] The maximum costs for the Hybrid approach reflects design costs of small landfills that are located in States that have few existing requirements; the maximum costs for the limited approach reflect costs for small landfills that incur high corrective action costs.

The range of incremental costs shown in Table 4 can be attributed to three factors: the wide distribution of landfill sizes, the diversity of current State regulatory programs, and the differing degrees of flexibility available to States in administering the various regulatory approaches. Landfill size is a key factor in determining the cost per ton, with larger landfills benefitting significantly from economies of scale. Landfills located in States that have already implemented comprehensive solid waste regulatory programs will face lower incremental costs than landfills in States that currently have few requirements. Finally, the flexibility available to States in the Hybrid approach gives approved States the ability to allow landfill owners and operators to choose the least-cost design that meets the performance standard.

Table 5 illustrates the importance of landfill size and a performance-based regulatory approach. Looking at an upper-bound cost scenario (i.e., 40-year post-closure care period), the cost under the Subtitle C option would drop from $73 per ton for a 10 TPD landfill to $14 per ton for a 1500 TPD landfill. This clearly demonstrates the benefits of economies of scale and further supports the trend toward larger, regional landfills. Table 6 also highlights the benefits of a performance-based approach, such as the Hybrid option. A subtitle C design approach would impose a cost of $73 per ton on all 10 TPD landfills, whereas under a flexible performance standard approach, costs could vary from $47 to $16 per ton, depending on the design necessary to meet the performance standard. Thus, under a performance-based approach owners and operators have a significant opportunity to reduce costs by siting new landfills in good locations.

TABLE 5.—LANDFILL DESIGN OPTIONS; AVERAGE INCREMENTAL COST PER TON

[No state credit included]

Landfill size	Subtitle C [1]	Performance based design options		
		Composite liner/ cover [2]	Synthetic liner/ cover [3]	Unlined veg. cover [4]
10 TPD	$73	$47	$37	$16
175 TPD	26	17	12	3
1500 TD	14	9	6	2

[1] Composite liner plus synthetic liner, composite cover, double leachate collection system.

[2] Composite liner synthetic cover, leachate collection system.

[3] Synthetic liner synthetic cover, no leachate collection system.

[4] Unlined, vegetative cover, no leachate collection system.

The economic impact analysis looks at cost per household, cost as a percent of median household income, and cost as a percentage of community expenditures. As shown in Table 6, the average incremental cost per household of the Hybrid approach is $4 per year. This cost is higher than the limited approach ($2 per year).

TABLE 6.—AVERAGE [1] COST PER HOUSEHOLD (CPH) PER YEAR

Regulatory scenario	Best estimate cost scenario
Hybrid Approach	$4
Limited Approach	2

[1] Average CPH estimated by dividing total national cost by total number of households.

The economic impact results in Table 7 indicate that neither the Hybrid approach or the limited approach would exceed the moderate impact threshold for individual household (defined for this analysis as an incremental increase in household costs of greater than $100 per year, or roughly $8 per month). EPA determined that impacts indicated by incremental costs as a percentage of each community's median household income are similar to cost per household results, and thus cost as a percentage of median household income results are not presented here.

TABLE 7.—ADDITIONAL MEASURES OF COST PER HOUSEHOLD (CPH) PER YEAR

[40-Year Post-Closure Care Period]

Regulatory scenario	Percent of communities with CPH > $100	Maximum CPH [1]
Hybrid Approach	0.0	$62
Limited Approach	0.0	52

[1] Maximum CPH determined by calculating CPH from landfill with highest cost per ton.

In addition to impacts on individual households, a key measure the Agency used in estimating the economic impacts of the various regulatory options was the percentage of a community's total budget that would need to be spent on solid waste disposal as a result of this rule. EPA's available data indicate that the typical community now spends approximately 0.5 percent of its total budget on solid waste disposal (1982 Census of Governments). The Agency considered a doubling of these costs—i.e., increases of solid waste disposal costs to more than 1.0 percent of a community's total budget—to be a significant economic impact that may exceed the practicable capability of many of these communities.

As indicated in Table 8, EPA found significant differences in costs as a share of the total community budget for the various options. Under the Hybrid approach and limited option costs would exceed the 1 percent impact threshold for less than 2 percent of local governments (representing less than one percent of the U.S. population).

TABLE 8.—COST AS PERCENTAGE OF EXPENDITURES (CPE)

Regulatory scenario	Percent of communities with CPE > 1% best estimate cost scenario	Maximum CPE [1] (percent)
Hybrid Approach	1.4	3.1
Limited Approach	1.4	2.6

[1] Maximum CPE represents the CPE for community with highest ratio of cost per community expenditure.

The results presented in Table 8 are significantly lower than results in the original RIA. The strong mitigation of impacts is a result of assumed increased regionalization, increased state regulations, and flexibility in groundwater monitoring requirements. These changes in the analysis have resulted in the number of significantly impacted communities being greatly reduced from RIA estimates.

EPA believes regionalization will play such a major role in mitigating the long-term impacts of all of the regulatory approaches for the following reasons. EPA's small community analysis indicates that the majority (90 percent) of impacted communities are small communities (i.e., fewer than 5,000 people). These small communities typically operate small landfills, which handle only a small portion of the total municipal solid waste stream. As shown in Table 9, small landfills (less than 17.5 TPD) represented 51 percent of the total number of landfills in 1986, yet handled only 2 percent of the total waste.

In addition, these small landfills tend to be poorly located and designed, and operate at the high end of the cost per ton scale. As a result, small communities have a number of strong incentives to regionalize and, in fact, many of them have moved or are currently moving to regional facilities. This trend is evidenced by the drop in landfills over the past twenty years. While 1970 estimates of the U.S. landfill population neared 18,000, EPA estimates that in 1986, only approximately 6,000 MSWLFs were operating—and that the total number of landfills continues to decrease. Because of this strong trend toward regionalization, the Agency believes that the long term impacts of the regulatory options will decrease over time.

TABLE 9.—1986 SIZE AND WASTE DISTRIBUTION OF MUNICIPAL SOLID WASTE LANDFILLS [1]

Landfill size (TPD)	Percentage of total landfills	Percentage of total waste handled
1–17.5	51	2
17.6–50	17	4
51–125	13	9
126–275	7	11
276–563	5	16
564–1,125	3	19
>1,125	3	40

[1] Numbers may not add due to rounding

In addition to the mitigating affection of regionalization on small community impacts, EPA has included a small community exemption in today's final rule. This exemption applies to small landfills (less than an annual average of 20 TPD) in arid (receiving less than 25 inches of rainfall a year) or remote areas which do not have any reasonable alternative for regionalization, if there is no evidence of existing ground-water contamination. The small community provision would allow these communities to be exempted from certain requirements of this rule, thereby reducing economic impacts on these communities. For more information on this exemption, see section IV.A of this preamble.

4. Selection of Today's Regulatory Approach

The Agency believes the Hybrid option strikes the appropriate balance between protection of human health and the environment and consideration of practicable capability and, therefore, has selected this approach for today's final rule.

As discussed above, preventive approaches, such as the Hybrid approach, provide more effective, long-term protection of human health and the environment than the Limited Rule option. At the same time, the Hybrid option imposes lower costs than the subtitle C option. In developing this rule, EPA was very concerned about the potential impacts on small communities, including small Indian Tribes and, therefore, carefully evaluated this issue. EPA's analysis showed that the majority of the communities that would be significantly impacted are small communities that manage relatively small MSWLFs.

To reduce impacts on small communities, EPA has added a special exemption to today's final rule directed at small landfills serving communities, including Indian Tribes, that have barriers to regionalization. This provision exempts small landfills (those that dispose of less than 20 TPD of solid waste daily on the average) in certain settings from the high-cost requirements in today's rule. This exemption is available to those small landfills in remote or arid locations that do not have evidence of ground-water contamination.

EPA believes that these limited impacts on small communities will be further reduced by two factors. First, as discussed above, many small communities are expected to reduce community landfill costs by taking advantage of larger economies of scale through participating in regionalized landfills. Second, the performance-based element of the Hybrid approach provides the option for communities to avoid high control costs by siting new landfills in non-vulnerable locations. A performance-based approach provides communities with opportunities to dramatically reduce costs by siting new MSWLFs in areas where the characteristics of the site indicate that a less costly design may be used.

EPA believes that those small communities and Indian Tribes that cannot take advantage of better siting opportunities, regionalization, or the exemption, should be subject to today's requirements to ensure protection of human health and the environment and to avoid costly future clean-up problems.

C. Pollution Prevention Aspects of Final Rule

Today's final rule establishes revised standards for MSWLFs that set in place a strong economic incentive for increased source reduction and recycling. Specifically, today's rule, by calling for communities, including public and private entities, to pay the true cost of safe landfilling, makes source reduction and recycling programs more competitive.

Specifically, today's final rule establishes this economic incentive by requiring a wide range of design and management practices aimed at preventing releases from municipal solid waste landfills. In addition, the location provisions of today's rule prevent or restrict the siting of landfills in areas that are especially vulnerable to contamination. For example, new landfills (including lateral expansions of existing landfills) are prohibited from locating in the 100-year floodplain unless special features are incorporated into the facility design. Further, today's rule requires new landfills to be equipped with a composite liner, or, in approved States, an alternative design that will prevent unacceptable releases from the landfill.

The operating criteria also contain a variety of landfill management requirements that are aimed at preventing potential environmental or public health problems. These provisions include restrictions on public access to the landfill, daily cover requirements to minimize disease vector and other problems, methane gas controls to prevent gas explosions, controls on runoff from the facility to prevent releases to surface and ground water resources, and restrictions on the landfilling of certain wastes, including hazardous waste and liquid wastes, to minimize the toxicity and quantity of leachate that may threaten ground water.

Finally, today's rule also incorporates preventive measures into the closure and long-term care of landfills. At closure, the owners or operators of all landfills must install a final cap designed to minimize leachate generation and migration, and then maintain and monitor the site for 30 years following closure (unless an approved State sets an alternative time period).

IV. Major Issues

In finalizing today's rule, EPA had to address a number of major issues. The general issues—the application of today's rule to small MSWLFs, the rule's regulatory structure, implementation of the revised Criteria, ground-water policy, and pollutant limits for sewage sludge—are discussed in this section of the preamble. The specific technical issues pertaining to facility design criteria, ground-water monitoring requirements, financial responsibility requirements, the effective date of today's rule, and the application of this rule to closed facilities are discussed later in the technical appendices to the preamble. Moreover, as discussed above, the specific criteria for EPA approval of State programs will be established in a separate rule expected to be proposed in early 1992.

A. Small Landfills

One of the most significant issues raised by commenters was the application of the revised Criteria to small landfills. This is an issue for two reasons. First, the estimated universe of approximately 6,000 MSWLFs subject to the revised Criteria includes a large number of small facilities. Data acquired by EPA through the 1986 survey of MSWLF owners and operators (Ref. 2) indicate that about 50 percent (3,000) of MSWLFs nationwide handle 20 tons or less of municipal solid waste daily. A landfill that receives 20 tons of municipal solid waste per day serves a community of approximately 10,000 people. Second, as proposed, the revised Criteria would have imposed significant costs on these small MSWLFs and the small communities, including small Indian Tribes, they serve. The most significant costs are associated with the design requirements, ground-water monitoring, and corrective action. A unique characteristic of small landfills is that they cannot benefit from the economies of scale available to larger MSWLFs.

The proposal treated all MSWLFs the same, regardless of size. EPA stated in the proposal that size represents only one factor in determining potential risk, and that other variables, such as design and operating controls, location and climate characteristics, and waste streams, can be significant determinants of risk regardless of MSWLF size. The proposal did provide States some flexibility to address particular site-specific conditions present at MSWLFs, including small facilities. In addition, the proposed 18-month rule effective date, combined with the five-year phase-in for ground-water monitoring, provided time for owners or operators of small MSWLFs to comply with the revised Criteria or to make other arrangements for solid waste management. The Agency requested public comment on whether there should be special consideration given to small landfills under the final revised Criteria.

The Agency received extensive comments that directly addressed the issue of small MSWLFs. Many commenters were concerned that small communities, including small Indian Tribes, that own small landfills would face a shortage of professionals appropriately trained in landfill design, installation, and operation that would prevent or severely hamper timely implementation of the revised Criteria. Additionally, commenters expressed concern that small communities would have insufficient financial resources to upgrade their existing small landfills to comply with the revised Criteria. They feared that residents of small communities would resist an increase in landfill tipping fees to cover the additional management and compliance costs associated with the revised Criteria. Moreover, some commenters feared a resurgence in illegal dumping if the Criteria resulted in the closure of the many small landfills now in operation.

In addition to the economic constraints faced by small communities, commenters pointed out that significant obstacles to regionalization of solid waste management exist, particularly in remote areas of the country where communities tend to be small and separated by great distances. In certain portions of Alaska, for example, villages often are separated by miles of tundra. During a large part of the year surface transportation of municipal solid waste becomes virtually impossible due to winter weather conditions, so transporting waste to a distant regional facility is not practicable. Commenters requested that these portions of Alaska not be required to comply with today's requirements. Other commenters noted that regionalization of solid waste management in rural areas of the West that are arid and have few, widely dispersed small communities would be hampered by the need to transport waste over great distances. Moreover, due to the small amounts of annual precipitation in this region there is little generation of landfill leachate, and ground waters are great distances below the surface. Commenters argued that these communities, including small Indian Tribes, should be accorded special treatment. Without such treatment, they indicated that they would be forced to close their landfills. The end result would be increased littering and open dumping, including dumping of trash in waterways.

On the other hand, a number of commenters agreed with the proposal and urged that there be no exemptions granted to small MSWLFs. They argued that even small landfills can pose significant threats to human health and the environment. These commenters believed that marginal, small MSWLFs should be closed in favor of more protective, modern facilities to promote the regionalization of solid waste management.

EPA agrees that regionalization of solid waste management in rural areas, employing larger, better located, designed, and operated MSWLFs, is preferable to continued use of small, poorly planned facilities that may pose health and environmental threats to their communities. The Agency's original thinking with respect to small MSWLFs was that the move to greater regionalization, in order to benefit from the economies of scale, would be a secondary benefit of the revised Criteria. The Agency recognizes, however, that regionalization is not a feasible alternative for some small communities and acknowledges the plight of small MSWLFs in areas of the country where few solid waste management alternatives exist.

In addition, the Agency is sensitive to the hardship the revised Criteria would create for many of these small communities, including small Indian Tribes. The Regulatory Flexibility Analysis (RFA) performed for this rule indicates that some small communities will be impacted by the costs of complying with the revised Criteria. EPA defined the significant impact threshold to be compliance costs exceeding one percent of a community's total budget (which corresponds to a doubling of solid waste disposal costs in the typical community). EPA estimated, under reasonable worst case conditions, that the majority of the communities that would exceed this significant impact threshold would be small communities. To mitigate these impacts, EPA made a number of changes in today's rule that will benefit all small MSWLFs and added a special exemption that will grant specific relief to certain small MSWLFs without practicable regional waste management alternatives. As mentioned previously in this preamble, this special exemption for small MSWLFs reduced the impact of the rule. Less than two percent of local governments exceed the significant economic impact threshold.

As a general matter, some of the changes in today's rule that are applicable to all MSWLFs will benefit small landfills. For example, today's rule allows all MSWLF owners and operators time to comply with the more costly provisions of the revised Criteria by phasing in ground-water monitoring requirements over a five-year period beginning on the date of publication of today's rule. In addition, EPA is delaying the effective date of the financial assurance requirements until 30 months after publication of this rule, which should benefit small communities. Finally, today's rule provides that States with approved programs may shorten the MSWLF post-closure care period on a case-by-case basis. EPA believes that all these measures benefit small MSWLFs.

More specifically directed to small MSWLFs, EPA granted relief in today's rule to certain small MSWLFs where compliance with the revised Criteria is beyond the practicable capability of their communities and circumstances make regional waste management impracticable. Today's rule exempts owners or operators of certain small landfills from certain portions of the criteria, including the design, ground-water monitoring, and corrective action requirements of the revised Criteria. To qualify for this exemption, the landfill must meet the following criteria: (1) The landfill receives less than 20 tons per day of solid waste on an annual average, (2) there is no evidence of existing ground-water contamination from the landfill, and (3) one of the following conditions exists: (A) The landfill serves a community that experiences an annual interruption of at least three consecutive months of surface transportation, which prevents access to a regional waste management facility, or (B) the landfill serves a community for which there is no practicable waste management alternative and the landfill is located in an area that annually receives 25 inches or less of precipitation. These terms and conditions are defined below.

Today's rule defines what the Agency considers to be a "small municipal solid waste landfill" for the purposes of the small landfill exemption. Numerous commenters suggested possible definitions for small MSWLFs, including those MSWLFs that receive less than 500–1,000 tons of municipal solid waste annually, or serve a population of between 1,000 and 20,000 persons. The Agency evaluated these wide range of comments and selected a cutoff of 10,000 persons which corresponds to a landfill size of 20 tons per day. This cut-off falls within the range suggested by commenters and captures the small communities that will be most severely impacted by the final rule. The Agency has tried to strike a balance between granting relief to the appropriate small communities versus exempting all small landfills. The Agency evaluated its existing data base to find that over 50 percent of existing landfills dispose of less than 20 TPD. These 50 percent of the landfills, however, only dispose of 2 to 3 percent of the total waste disposed. Therefore, only a small amount of the total waste disposed is affected by the exemption. For the above reasons, the Agency determined that landfills serving communities (including Indian Tribes) of fewer than 10,000 best defined a "small" MSWLF for the purpose of granting relief from the most costly requirements in the revised Criteria.

In order to facilitate implementation, today's rule defines "small MSWLFs" in terms of the amount of the waste received at the landfill rather than the population served by the landfill. Because population and waste generation patterns will vary over time, EPA believes a definition based on quantity of waste received at the landfill will be more direct and easier to implement. The amount of waste disposed at a MSWLF is either readily available or can be easily estimated. Therefore, the Agency chose a cut-off of 20 tons per day on an annual average, which corresponds to the waste generation of a community of 10,000. Specifically, this figure was derived by multiplying the average amount of solid waste generated daily per person in the United States (4.0 lbs.) by the community size (10,000). The 4.0 lbs. per person figure is contained in the EPA Report "Characterization of Municipal Solid Waste in the United States: 1990 Update" (Ref. 9). In setting the 20 ton per day limit, the Agency specifically included the phrase "on an annual average" to address situations in which small landfills operate only certain days of the week. In such situations, a small landfill serving a population of fewer than 10,000 may receive more than 20 tons of municipal solid waste per day provided the average amount received by the landfill does not exceed 20 tons/day over a one-year period.

Therefore, § 258.1(f) of today's rule defines "small municipal solid waste landfill" as a landfill at which 20 tons or less of municipal solid waste is disposed of daily on an annual average. A landfill that falls within this definition is eligible for the exemption from complying with the design criteria and ground-water and corrective action requirements of today's rule, if there is no evidence of existing ground-water contamination from the landfill and if the community it serves is not practicably capable of regionalizing because of one or two specific conditions described below.

EPA decided to limit the exemption in today's rule to small landfills so long as there is no evidence of ground-water contamination from the facility because the Agency sees no justification for providing relief to landfills that are contaminating ground water. Such contamination may be indicated by contamination of neighboring drinking water wells or other means. In the Agency's view, owners and operators of these landfills should be responsible for taking appropriate corrective action if contamination is present. Therefore, the exemption for small landfills in today's rule is not available to existing landfills for which there is evidence of existing ground-water contamination. Furthermore, today's rule requires that if contamination is discovered at some future date, the owner or operator must notify the State Director and, thereafter, comply with the design, ground-water monitoring, and corrective action provisions in today's rule.

As previously mentioned, today's rule sets forth two situations in which a small MSWLF may qualify for an exemption. The first situation is one in which the MSWLF serves a community that experiences an annual interruption of three consecutive months of surface transportation that prevents access to a regional facility. This provision was developed based on data submitted by commenters from Alaska, where access to some rural villages is restricted by extreme winter climatic conditions. Typically, surface transportation to and from these villages is impossible three months out of the year due to snow and ice accumulation. Consequently, solid waste may only be transported short distances, for all practical purposes prohibiting the use of regional facilities.

The second situation includes MSWLFs that serve communities for which there are no practicable waste management alternatives and are located in areas that annually receive 25 inches or less of precipitation. Long distances between communities are particularly common in the West and often put the regionalization of waste management beyond the practicable capability of small communities, while arid conditions reduce the likelihood of ground-water contamination.

As used in this second situation, EPA considers the term "practicable waste management alternative" to mean another landfill, transfer station,

materials or resource recovery facility that may serve as a reasonable substitute for the MSWLF currently employed for disposal. EPA encourages owners/operators to employ their knowledge of the universe of solid waste management options currently and potentially available when evaluating the merits of available practicable alternatives. Owners/operators may also want to consider the economic implications of long haul distances. As an example, owners/operators might want to consider how much a community must increase its percentage of total budget spent on solid waste disposal to cover costs for waste hauling to a regional facility. The Agency believes that the determination of what haul distances would be considered unreasonable for a community must be made considering local or regional geographical and climatic constraints.

For this second situation, EPA set the 25-inch cap on annual precipitation to ensure that the exemption would be available only to small MSWLFs where the risk of ground-water contamination is reduced because of lessened leachate generation and slower contaminant migration. In selecting a precipitation cut-off, EPA considered comments on the proposal, which used 40 inches of precipitation as the cut-off for the categorical approach to the design criteria. All commenters suggested that the Agency use a precipitation cut-off less than 40 inches of rainfall per year. EPA considered precipitation cut-off values greater than 25 inches per year, but rejected them because EPA believes that the risk of ground-water contamination is too great in these areas. The Agency decided on 25 inches, which represents the lower range of commenters' suggestions and offers a conservative number for determining the availability of the exemption. In addition, this number is generally supported by landfill case studies derived from State data. These data indicate that little leachate is generated in areas where the precipitation does not exceed 25 inches annually, which suggests that precipitation is an indicator of the potential of a landfill to contaminate ground water.

Today's small MSWLF exemption applies to new as well as existing small MSWLFs. Because logistical barriers to regionalization will not likely change over time for many communities, EPA believes that small communities will have as much difficulty meeting the compliance costs for their new MSWLFs as for their existing facilities. However, the Agency considered allowing waivers for new MSWLFs for only a limited period of time (e.g., five years), but rejected this option for two reasons. First, Alaskan villages likely will always have seasonal interruptions of surface transportation. Second, many western communities and Indian Tribes will continue to be geographically isolated and continue to face long haul distances to regional facilities. The Agency does recognize that in some instances the practicability of regionalization will change over time, improving as rural areas develop and gain financial resources.

The small community exemption in today's rule exempts qualifying small MSWLFs from the design, ground-water monitoring, and corrective action requirements of today's rule. The RIA for this rule identified these requirements as the biggest cost items of the final rule for small MSWLFs. Small MSWLFs will still have to comply with the location standards, the operating criteria, closure and post-closure care requirements (excluding ground-water monitoring), and the financial assurance requirements appropriate to these activities. The Agency believes that even small MSWLFs should be subject to these criteria because they are less expensive (relative to other requirements in today's rule) procedures that protect human health and the environment.

EPA believes that exempting small landfills from the ground-water monitoring and corrective action requirements of today's rule comports with the statute (i.e., section 4010 (c)) and the Congressional intent for a number of reasons. First, to address Congressional concern for ground-water contamination, EPA has narrowly drawn the exemption such that only those small MSWLFs for which there is no evidence of ground-water contamination are eligible for the exemption (in addition to one of the other two criteria). Second, as stated above, the exemption is a conditional one such that the owner/operator is no longer eligible for the exemption when there is evidence of ground-water contamination associated with the facility. As such, the facility cannot escape corrective action for known releases. Third, the 25-inch cap on annual precipitation contained in the second criterion ensures that this exemption will be limited to those small MSWLFs where the risk of ground-water contamination is considerably reduced. Finally, both the surface transportation difficulties and the "no practicable waste management alternatives" criteria for obtaining an exemption reflect the "practicable capabilities" evaluation that the statutory language of section 4010(c) and the legislative history indicate Congress intended EPA to conduct when revising the criteria under section 4004(a).

Small communities, including Indian Tribes, whose small landfills do not qualify for a waiver under today's rule should consider regionalization to mitigate costs. Due to economies of scale, small landfills operate at higher cost per ton than larger, regional facilities.

B. Regulatory Structure

Under the regulatory structure of the proposed rule, approval by or interaction with the State regulatory agency by the owner or operator was necessary for implementation of many requirements of the revised Criteria. For example, the proposed design criteria required the owner or operator to design the MSWLF to meet a design goal established by the State. Also, the closure criteria required the owner or operator to close the MSWLF in accordance with a closure plan approved by the State. Although these provisions did not propose an alternative implementation scheme where a State was unable or unwilling to perform the necessary approvals or establish particular standards such as the design goal, the Agency anticipated the limitations of an implementation approach significantly reliant upon State implementation. Under section X.D.1. of the proposed rule preamble, the Agency specifically requested comments on "What is an appropriate and practical EPA role if the States do not adopt and implement the revised Criteria?" (53 FR 33383.)

The proposed rule did suggest an alternative implementation scheme for certain of the revised criteria. Many of the proposed standards were "self-implementing," in that they could be implemented directly by an owner or operator without the supervision or intervention of a State regulatory authority. The self-implementing provisions of the proposed rule were discussed in section X.A.2. of the proposal preamble in the context of a discussion of a suggested two-stage approach to effective dates whereby "self-implementing" aspects of the regulations would become effective in 6 to 12 months and those regulations requiring the participation of a State authority would become effective in 18 months. There the Agency listed the self-implementing provisions of the rule to include the "general operating criteria such as the liquids management

restrictions, the disease vector and explosive gas controls, recordkeeping, and closure and post-closure planning requirements." (53 FR 33382.)

In response to the two-stage effective date proposal, the Agency received many comments on the implementation of the regulations, especially commenters' views of the capabilities of State authorities to undertake the responsibilities required by EPA's proposed implementation approach. EPA received numerous comments from States as well as owners and operators of MSWLFs stating that 18 months was not a sufficient period of time for States to obtain the necessary statutory and regulatory authorities necessary to implement the rule as proposed. According to these commenters, the consequence of the 18-month effective date would be widespread noncompliance with the revised Criteria and a backlog of permits and closure and corrective action plans awaiting State approval.

For instance, citing the insufficiency of the 18-month time period, one industry commenter stated that: "once the effective date 'kicks in', States will be confronted with not only issuing new permits for new facilities but also revisiting permits for facilities that will continue to operate," and added, "obviously, States will not be able to issue new or revised permits all at once and will have to set priorities." To address this problem, this commenter suggested a way in which to increase the self-implementing nature of the rule, the approach used by the Agency in many of the proposed criteria, through development of largely self-implemented class permits.

Several State agency commenters echoed this concern with the burden placed upon State agencies under the revised Criteria's proposed implementation approach. One State agency commented: "It is unreasonable to expect the States to have the framework in place to approve the gas detection system design and monitoring plans, evaluate and approve the closure plans, and approve the mechanisms chosen for financial assurance within eighteen months of the final rule." Other States commented that the resources and expertise necessary to implement the revised criteria far exceeded those presently available to the State agencies that would be responsible for implementing the revised criteria under the proposed rule.

EPA had proposed a uniform effective date (except for ground water monitoring) of 18 months. The Agency received numerous comments from the public which argued that this 18 month effective date did not provide sufficient time for either owners or operators of MSWLFs to comply with the rule or for states to adopt and implement permit programs to ensure that owners or operators do comply with the rule provisions. EPA still believes that a uniform effective date, except for ground-water monitoring and financial responsibility requirements, is an important aspect of the rule's implementation. However, after closely evaluating the comments received which questioned the wisdom of imposing an 18 month effective date for most provisions of the rule, EPA has decided to extend the effective date by six additional months. As a result, other than for ground-water monitoring and financial assurance requirements, all provisions of the rule will become effective 24 months after the rule is published in the **Federal Register.**

The Agency is adopting a 24 months effective date instead of the 18 month period contained in the proposed rule for two reasons. First, owners and operators and other commenters stated that the 18 month period did not provide sufficient time for facilities to have sufficient capital and resources to comply with the rule requirements. To deal with these concerns, commenters suggested that the rule become effective in anywhere from 24 to 48 months from the date of publication. EPA has decided to provide an additional six months before the rule becomes effective to assure that owners and operators have sufficient time to comply with the extensive requirements contained in the final rule. As explained elsewhere, EPA has also decided that the ground-water monitoring requirements will be phased in over a five year period and that the financial responsibility requirements will become effective in 30 months.

Secondly, while RCRA section 4005(c) requires states to adopt and implement a permit program or other system of prior approval within 18 months after the revised landfill criteria are promulgated, EPA recognizes that even if states are able to meet that statutory deadline the Agency will still need time to evaluate and make a determination as to the adequacy of the state permit program in accordance with RCRA section 4005(c)(1)(C). Obtaining EPA's approval of a state permit program is an important element in the implementation of the revised Criteria because many of the rule's provisions are tied to whether a state has a permit program which has been approved by the Agency. Six additional months will provide EPA with time that may be necessary to review the adequacy of state permit programs.

EPA also believes that it would be unreasonable to require owners and operators of MSWLFs to comply with newly revised State programs by the same date that the States must have adopted and implemented such programs (i.e., 18 months). By extending the effective date of the revised Criteria by an additional six months, EPA believes that owners and operators will have adequate time to comply with these new State programs.

At the same time, however, the Agency believes it necessary, based upon the significant comments addressing the issue, to provide for a means by which implementation of revised, more protective Criteria can occur within 24 months of today's date. As a result of the numerous comments from both States and owners and operators detailing the lack of State resources for solid waste management programs and the need for more time to implement or revise State permitting programs, the Agency determined that a plan that relied solely on State oversight or interaction with the State could not assure the implementation of the revised Criteria by the rule's effective date. The Agency also realized that without State oversight, the regulations as proposed could not be effectively implemented, because they relied upon a standard that must be developed by the State (e.g., the design standard). In summary, were the revised Criteria promulgated as proposed, EPA determined that the public would not be adequately assured of the implementation of the revised Criteria and the concomitant increases in health and environmental protection in States without approved programs.

In response to the above concerns, the Agency has developed a final rule that provides for effective implementation not only in approved States, where State oversight will be present, but also in States without approved programs. For approved States, today's rule is based on performance standards that allow States to consider local conditions in setting appropriate controls for municipal landfills. This performance standard approach preserves the traditional State role in defining appropriate standards to the greatest extent possible, while having a protective national standard.

Performance standards have been incorporated throughout today's rule. For example, the design criteria in Section 258.40 provides that approved States may approve landfill designs that will ensure that the maximum contaminant levels will be met at the relevant point of compliance in ground water. Under this approach, approved

States may consider a wide range of site-specific factors in determining the appropriate design that meets the performance standard. At sites where ground water is vulnerable due to the hydrogeologic conditions present, a State may require a composite liner system, similar to that required in today's rule for landfills located in States without approved programs. On the other hand, in areas where the ground water is less vulnerable (e.g., in arid areas), the State will likely determine that a less comprehensive design is fully protective of ground water. In fact, under certain climatic and hydrogeologic conditions, liner systems may not be needed because the hydrogeology at the site may provide adequate protection of ground water.

The rule's standard requires that an approved State's program be capable of protecting ground water that is currently used or reasonably expected to be used for drinking water at the relevant point of compliance. In determining the appropriate mix of prevention and remediation strategies to incorporate into their programs, States are expected to consider the use, value, and vulnerability of potentially affected ground-water resources, as well as the social and economic values of these resources, ensuring that the environmental and public health benefits of each dollar spent are maximized. For landfills located where ground water is currently used or reasonably expected to be used for drinking water, the performance standard requires States to prevent contamination from exceeding drinking water standards. In selecting a program to meet this rule's performance standard, an approved State may use the rule's specific comprehensive design; or it may use any program it determines would be capable of meeting the performance standard. In short, whenever a State develops a program to deal with local conditions, the Federal comprehensive design alternative would have only the legal status of "guidance" and would not be mandatory. EPA will not require States to obtain a "waiver" of the comprehensive design requirement to obtain program approval. States are provided substantial flexibility to consider local site-specific conditions in determining how to address variable ground-water quality or location. For example, if ground water is located several hundred feet below a landfill, or the aquifer is separated from the landfill by a substantial impermeable layer, the State may determine that the comprehensive liner design is not necessary to meet the performance standard. The specific criteria by which State programs will be approved will be published in a separate rule (the "State Implementation Rule"). That rule will set forth specific conditions where State flexibility is appropriate.

As provided in section 4005(c)(1)(B), within 18 months of the promulgation of this rule, States must adopt and implement a permit program or other system of prior approval and conditions that complies with the performance standard announced today. As discussed above, states need not adopt the EPA comprehensive design alternative, but may choose any design or mix of designs that will secure compliance with the rule's performance standard.

In addition, under section 4005(c)(1)(C), EPA must determine whether each State has developed an adequate program to meet the performance standard. As noted above, in making this determination, EPA will rely upon the specific criteria to be published in the State Implementation Rule. In order to ensure that States have the necessary guidance to prepare their submissions for EPA review, the Agency will not require these submissions until 12 months following the promulgation of the State Implementation Rule. Any State submission received before the expiration of this 12-month period will be reviewed pursuant to EPA's authority under section 4005(c)(1)(C), but will not be subject to section 4007(a). This 12-month provision will be included in EPA's proposed State Implementation Rule.

The Agency believes that some States may want to seek early EPA determination that their State programs comply with the performance standard announced today. For example, some States have chosen to adopt strict design standards similar to EPA's comprehensive design. EPA fully expects that these State programs will comply with today's performance standard irrespective of the specific criteria to be developed in the State Implementation Rule. Under these circumstances, EPA expects to make early determinations of State compliance in order to expedite State programs for which favorable EPA determinations appear to be a mere formality.

These early determinations, however, should not be interpreted as implicit guidelines, presumptions, or any other indication of the specific criteria that EPA will use to evaluate State programs. Nor will EPA, in developing the State Implementation Rule, rely upon the standards of the State programs represented in these early determinations. States that have chosen to adopt and implement programs that go beyond the requirements of section 4005(c)(1)(B) are likely to be candidates for early determinations, and do not necessarily provide an appropriate guide to the process that EPA will ultimately use for making compliance determinations under section 4005(c)(1)(C).

Unless and until EPA determines that a State program is not adequate to secure compliance with the performance standard announced today, the State will retain responsibility for administering this Subtitle of the Act.

Today's rule also establishes provisions that ensure effective and protective implementation of this rule in States without approved programs where State oversight will not be present. To address these situations, the Agency has amended each standard under the revised Criteria that required State interaction under the proposed rule to make that standard self-implementing. For example, the design standard (§ 258.40) contains in addition to the performance standard described above for approved States, a self-implementing requirement for landfill design in States without approved programs. This requirement specifies in these cases landfills must be designed with a composite liner meeting certain minimum specifications.

However, § 258.40(e) provides a backstop mechanism which will enable, under certain conditions, owners or operators to employ designs less stringent than EPA's comprehensive design in the unlikely event that the upcoming State Implementation Rule has not been promulgated on schedule. First, the owner or operator of such a facility would need to obtain concurrence from the State that the specific design meets the general performance standard set forth in § 258.40(a)(1). The State would then petition EPA to review its determination. EPA has 30 days to approve or disapprove the State's petition. Unless EPA determined within 30 days of such a petition that the State's determination was inadequate, the alternative design would be deemed to comply with the general performance standard. States are encouraged to work closely with the Regional Offices prior to formal submittal of petitions. This will allow the Agency to identify all information needs and to work with the State to resolve any difficult technical issues. This will also serve to avoid situations where the Agency would have

to disapprove the petition because insufficient information was provided.

Thus, as promulgated, every standard in today's rule may be implemented by the owner or operator without State oversight or participation where a State program has not been developed. A self-implementing approach has also been incorporated into the revised Criteria for the wetlands and unstable area location restrictions, the daily cover requirements, explosive gas control requirements, the groundwater monitoring and corrective action provisions, the closure and post closure care requirements, and the financial assurance provisions.

EPA is promulgating self-implementing standards because there may be States which do not act to adopt and implement an adequate program within 24 months. In most States, EPA does not expect this will be a problem. Moreover, to facilitate the expeditious preparation and approval of State programs, the Agency as noted above, will shortly propose a regulation detailing the required elements of an approvable State program. The next section of today's preamble describes the effort.

Despite the promulgation of self-implementing standards in today's rulemaking, EPA continues to believe that requirements such as those pertaining to landfill design, ground-water monitoring, corrective action, and closure should optimally be implemented under the oversight of a State implementing agency. Today's rule does not represent a shift away from the longstanding Agency policy of requiring regulatory oversight of such important procedures. Rather, the inclusion of self-implementing standards in today's rule is a recognition that, due to resource limitations, States may not have adequate programs in place by the effective date of the revised Criteria. This scheme will insure that in States that do not act to establish adequate programs, human health and the environment will be protected and the Federal requirements will be enforceable.

EPA recognizes that self-implemented standards possess certain drawbacks. First, self-implemented standards, such as corrective action plans, may be lacking in certain detail because they lack the input of a qualified and trained State regulatory official. Second, without qualified State oversight, owners and operators intent upon circumventing the regulations may find it easier to do so.

EPA has attempted to mitigate these drawbacks as much as possible in today's self-implementing standards. The final rule establishes, where possible, specific self-implementing requirements that are easy for the owner and operator to interpret and citizens to enforce through citizen suits. (For example, the cover material requirements of § 258.21 specify that landfills must be covered with at least six inches of earthen materials at the end of each operating day, or more frequent intervals if necessary to control disease vectors, fires, odors, blowing litter, and scavenging). This approach, however, was not possible for certain provisions, such as the number, spacing, and location of ground-water wells, where it was impossible for the Agency to set uniform standards because the appropriate approval was highly dependent on site-specific conditions. In these instances, the Agency has established performance criteria that the owner or operator must meet and, in many cases, requires that the owner or operator obtain third party certifications that document the decisions made or action taken to comply with the performance criteria. This certification must be placed in the operating record and made available to the State upon request. The Agency believes that to the extent many of the functions performed by the State under the proposed rule were essentially technical in nature, they may be performed by a third party who is not necessarily employed by or an agent of the State agency. EPA believes that such third-party oversight mitigates the danger of owners or operators abusing the self-implementing system. Finally, today's final rule requires the owner or operator to provide an opportunity for public review of potential corrective action remedies and to notify the State of the selected remedy.

C. Implementation and Enforcement

Another major issue EPA considered in today's rulemaking was the actual implementation and enforcement of the revised Criteria. This involves the procedures by which EPA will determine the adequacy of State programs for implementation of the Criteria, public participation in these programs, and enforcement considerations.

1. Procedures for State Program Approval

As noted above, section 4005(c) of RCRA requires that each State adopt and implement, not later than 18 months after promulgation of the revised Criteria, "a permit program or other system of prior approval and conditions" (State permit program) adequate to assure that each facility that may receive HHW or SQG waste will comply with the revised Criteria. Under section 4005(c) the primary responsibility for implementing and enforcing the revised Criteria rests with the States. EPA is required to "determine whether each State has developed an adequate program" pursuant to section 4005(c).

EPA's approach to State program approval recognizes the traditional State role in implementing landfill standards and protecting groundwater. EPA fully intends that States will maintain the lead role in implementing this program. EPA's goal is for all States to apply for and receive approval of their programs. Under this rule States will have the flexibility to tailor standards to meet their state-specific conditions. The rule's standard requires that an approved State's design be capable of protecting ground water at the specified point of compliance. In selecting a design to meet this performance standard, an approved State may adopt its own performance standard, it may use the rule's specific liner design, or it may use any design it determines would be capable of preventing contamination of ground water beyond the drinking water standards. In short, whenever a State develops a program to deal with local conditions, the Federal liner design alternative would have only the legal status of "guidance" and would not be mandatory. EPA will not require states to obtain a "waiver" of the liner requirement to obtain program approval.

EPA's State program approval rule will also set forth the Agency's proposed approach for implementing the revised Criteria on Indian lands. EPA plans to propose that Indian Tribes be eligible for permit program approval. The full discussion of this issue and rationale for EPA's proposed approach will be included in EPA's proposed State program approval rule.

2. Public Participation

The proposal did not specifically require States to afford interested citizens the opportunity for a public hearing with respect to most of the elements of today's rule. (Consideration of public concerns was proposed and retained in today's final rule, however, in the context of corrective action remedy selection.) Several commenters criticized the proposal because it lacked public participation requirements for MSWLF permitting and closure plan approval; they suggested that the Agency require States to provide for public participation in the implementation of today's rule. The Agency believes that public

participation is an important element in the permitting of MSWLFs because it affords the permit writer the opportunity to solicit and consider the views of the public when writing permits. Therefore, the Agency intends to propose public participation requirements for permitting decisions in the State program approval rule. Public participation in the State regulation development process is already required by the public participation requirements contained in 40 CFR part 256.

3. Enforcement Considerations

States that adopt programs meeting the Federal minimum Criteria may enforce them in accordance with State authorities. The preamble to the proposed rule noted that EPA expected the States to assume primary responsibility for implementing and enforcing the revised Criteria, consistent with the solid waste management framework established by the statute in Subtitle D. One commenter expressed concern that by allowing States to enforce the revised Criteria there would be variation in interpretation and enforcement of the revised Criteria from State to State. This commenter suggested that EPA assure uniformity in the interpretation and enforcement of the revised Criteria.

EPA believes that variation in the control applied to landfills in different States is appropriate to account for site-specific factors (e.g., hydrology, precipitation). Therefore, today's rule sets performance standards that allow consideration of site-specific conditions. EPA agrees that while the Federal standards are flexible to allow different site-specific controls in different States, the Federal performance standards should be consistently interpreted from State to State. To ensure that these provisions are consistently interpreted, EPA plans to develop technical guidance for MSWLF owners and operators and State regulatory officials to enhance uniformity in interpretation of the revised Criteria.

Citizens may seek enforcement of the revised Criteria, independent of any State enforcement program, by means of citizen suits under section 7002 of RCRA. Section 7002 provides that any person may commence a civil action on his own behalf against any person who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order that has become effective pursuant to RCRA. Once the self-implementing criteria in today's rule become effective, they constitute the basis for citizen enforcement actions brought in Federal court against facilities that fail to comply. It is important to note, however, that today's MSWLF Criteria offer alternative regulatory approaches in States with approved programs. For example, an approved State may use a performance standard in approving the design of a landfill rather than rely on the uniform liner standard in § 258.40(a)(2) of this rule. In approving State programs, EPA will review and explicitly approve the State's design or performance standard approach. In view of this approval, EPA expects that owners or operators in approved States who use the State's standard will be found by federal courts to have complied with the design requirements in part 258.

Under section 505 of the CWA, any person may commence a civil action against any person alleged to be in violation of an effluent standard or limitation under the CWA. "Effluent standard or limitation" is defined to include a regulation under section 405(d) of the CWA. (Section 505(f), 33 U.S.C. 1365(f).) Because the part 258 Criteria are also standards for sewage sludge use and disposal promulgated under section 405(d) of the CWA, citizen enforcement action in Federal court is authorized against non-complying facilities accepting sewage sludge.

EPA invited public comment on the overall role of EPA enforcement under subtitle D, the proper elements of an enforcement policy for ensuring compliance with the revised Criteria, and strategies for targeting MSWLFs that pose the greatest threat to human health and the environment. The Agency received one comment on the issue of Federal enforcement of the revised Criteria. This commenter noted that the legislative history of section 4005(c), the section authorizing EPA to enforce compliance with the revised Criteria, reflected Congressional concern with the poor record of State implementation of the original provisions of subtitle D. This commenter suggested that the continuing inadequacy of State solid waste program implementation and enforcement, as noted in EPA's own 1988 Report to Congress, argues for a vigorous Federal enforcement role. EPA agrees with the commenter that Congress intended EPA to enforce the revised Criteria in States that have an inadequate permit program. However, the statute is clear that EPA has no enforcement authority under section 4005 in approved States. EPA does, however, retain authority under section 7003 for imminent hazards.

Commenters also questioned whether EPA has authority to enforce the revised Criteria on Indian lands within a State without an approved permit program. This issue will be addressed in the State program approval rulemaking discussed earlier in this preamble.

D. Ground-Water Policy

Another issue EPA had to address in developing today's rule was its ground-water protection policy. This involves the role of ground-water resource evaluation in implementing the revised Criteria as well as additional controls imposed by State wellhead protection programs developed pursuant to the Safe Drinking Water Act.

1. Differential Protection of Ground-Water

Resource value refers to the current and future importance of ground water as a water supply and as an ecological resource. Highly saline ground water or ground water with very low yield may have a low resource value. Pristine ground water or ground water in high demand that cannot easily be replaced or restored similarly may have a high resource value. As EPA was developing the framework for the revised Criteria, the Agency considered at length the subject of differential protection of ground water based on its resource value. Specifically, EPA considered applying different federal engineering controls, monitoring, and corrective action requirements according to the resource value of the ground water.

In 1984 EPA issued the Ground-Water Protection Strategy, which established the concept of differential protection of ground water depending on its resource value. Accordingly, three classes of ground water were identified. Class I ground waters are defined as special ground waters that are highly vulnerable to contamination and that are either irreplaceable sources of drinking water or are ecologically vital. Class II ground waters are defined as current and potential sources of drinking water and those having other beneficial uses. Class III ground waters are defined as heavily saline ground water or ground water otherwise contaminated beyond the level allowing cleanup through methods commonly used by public water supply treatments. In 1991, EPA issued its Ground Water Task Force Report which confirms the role of States in devising ground-water protection strategies to meet State-specific needs. In devising their solid waste programs, States are expected to use ground-water classification and resource evaluations in making their State decisions.

The Agency's Ground-Water Protection Strategy and the concept of differential protection of ground water is

incorporated throughout today's rule. After the effective date and prior to State program approval, this rule requires the use of a specific design in all environmental settings. Following State approval, the rule provides States the flexibility to consider the resource value of ground water in determining appropriate landfill design, ground-water monitoring, and corrective action requirements. For example, today's rule allows States to approve less stringent landfill designs based on the quality of ground water, in addition to other factors. The performance standard for landfill design requires that landfills be designed to meet drinking water standards at a relevant point of compliance in ground water. Approved States may consider the quality of ground water, including whether the ground water is currently used or reasonably expected to be used as drinking water, in setting a relevant point of compliance. By establishing the relevent point of compliance further from the landfill in cases where the ground water is not reasonably expected to be used for drinking water, an approved State may allow less stringent landfill designs.

Subpart D of today's rule specifies that the relevant point of compliance may be up to 150 meters from the boundary of the landfill and must be on land owned by the owner of the landfill. However, the Agency is currently examining this issue as part of the Agency's subtitle C corrective action rule and if changes are made, they will be incorporated into this rule.

Differential protection also is built into today's corrective action requirements. Today's rule allows an approved State to determine that remediation of a release of an appendix II constituent is not necessary in situations where the MSWLF is located over an aquifer that is not currently or reasonably expected to be a source of drinking water, and that is not interconnected with waters to which the hazardous constituents are migrating or are likely to migrate in a concentration(s) that would exceed the ground-water protection standards established under § 258.55(h). Furthermore, today's rule allows the owner or operator to consider the value of ground-water in setting the schedule for initiating and completing corrective action. For example, a tighter schedule may be set for initiating and completing remedial activities for ground water of higher resource value than for ground water of lower resource value.

Today's rule also incorporates ground-water quality as a factor to be used by approved States in setting the phase-in schedule for ground-water monitoring. EPA also is requiring that the frequency of ground-water monitoring be specified by an approved State based on site-specific factors, including the resource value of the ground water. This approach, however, would not allow complete exemptions from ground-water monitoring for facilities located over low value ground water. Even though today's rule allows an approved State to waive the cleanup of a particular appendix II constituent in certain low value ground waters, the Agency believes that at least minimal ground-water monitoring is necessary at all MSWLFs (with the narrowly defined exception of small landfills discussed above) to evaluate the performance of facility design and operation and to identify potential threats to human health and the environment. Furthermore, HSWA specifically provides that the revised Criteria should require ground-water monitoring as necessary to detect contamination at facilities that may receive HHW or SQG waste.

Finally, EPA believes ground-water resource value already plays an important role in local and State decisions regarding the siting of MSWLFs. In this rule EPA has not established Federal siting Criteria specifically based on resource value because EPA believes that, due to the number and nature of MSWLFs regulated under Subtitle D of RCRA, resource value considerations in MSWLF siting are more appropriately made at the State and local levels.

2. Well Head Protection Programs

Section 1428 of the Safe Drinking Water Act (SDWA) contains requirements for the development and implementation of State wellhead protection (WHP) programs to protect wells and wellfields that are used, or may be used, to provide drinking water to public water systems. Under section 1428, each State is to adopt and submit to EPA for approval a WHP program that, at a minimum:

(1) Specifies the duties of State agencies, local governments, and public water systems in the development and implementation of the WHP program;

(2) For each wellhead, determines the wellhead protection area (WHPA), as defined in section 1428(e) of SDWA, based on all reasonably available hydrogeologic information on ground-water flow, recharge, and discharge and other information the State deems necessary to adequately determine the WHPA;

(3) Identifies within each WHPA all potential human sources of contaminants that may have any adverse health effects;

(4) Describes provisions for technical assistance, financial assistance, implementation of control measures, and education, training, and demonstration projects to protect the water supply within WHPAs from such contaminants;

(5) Includes contingency plans for the location and provision of alternate drinking water supplies for each public water system in the event of well or wellfield contamination by such contaminants;

(6) Requires that consideration be given to all potential sources of human contamination within the expected wellhead area of a new water well that serves a public water system; and

(7) Requires public participation in developing the WHP program.

EPA believes that today's rule complements the resource protection goals of State wellhead protection programs. The specific criteria for the location and monitoring of MSWLFs in this rule will help protect ground waters used by public water systems. Under an EPA-approved State WHP program, the State may impose more stringent or additional controls and requirements for MSWLFs than are included in today's rule. Any owner or operator of a MSWLF, in addition to meeting the requirements under today's rule, must also be in compliance with the State's WHP program. Therefore, meeting the requirements of this rule alone will not ensure that an owner or operator of an MSWLF is in compliance with a State's WHP program.

E. Issues Pertaining to Sewage Sludge

As noted above, today's rulemaking fulfills a portion of the CWA section 405(d) mandate that EPA promulgate regulations governing the use and disposal of sewage sludge. For this reason, the part 258 Criteria for MSWLFs are jointly promulgated under CWA and RCRA authorities and apply to all MSWLFs in which sewage sludge is co-disposed with household wastes. EPA believes today's rulemaking fully addresses this widely-used sewage sludge disposal practice.

The Agency received comments on two general issues pertaining to sewage sludge—pollutant limits for sewage sludge and removal credits. The preamble discussion below addresses these issues and presents the Agency's general rationale for using Part 258 to regulate sewage sludge disposal in MSWLFs.

1. Pollutant Limits for Sewage Sludge

In choosing to regulate sewage sludge disposal in MSWLFs by the part 258 Criteria, EPA decided not to establish pollutantspecific, numerical criteria for each toxic pollutant of concern in the sewage sludge for this sludge disposal practice. This decision is consistent with CWA section 405(d)(3), which permits EPA to promulgate alternative standards for protection of public health and the environment where EPA determines it is not feasible to prescribe numerical limits for pollutants of concern. Congress clearly recognized that circumstances would arise where it would not be technically feasible or scientifically justifiable for EPA to prescribe numerical limits for pollutants in sludge for certain sludge use and disposal practices.

EPA concluded it was not technically feasible to develop specific numeric limitations for pollutants in sewage sludge that are co-disposed with municipal solid waste for the following reasons. In developing numerical limitations for specific pollutants for the February 6, 1989 sewage sludge rule, EPA assessed risk to human health and the environment associated with individual pollutants when used or disposed in five different ways (incineration, land application, distribution and marketing, disposal in surface disposal units or disposal in sludge-only landfills). For its assessment, EPA relied on detailed mathematic models to simulate the movement of pollutants through the environment to environmental endpoints at potential risk from these use and disposal methods. A full discussion of this process is found in the proposal at 54 FR 5764–78. However, EPA cannot use its current models to describe the movement of sewage sludge pollutants from a co-disposal facility because of significant scientific uncertainties that confound any modelling effort.

The same mathematical processes used to model pollutant movement from a sludge-only facility cannot be used to establish numerical limitations for the pollutants in sewage sludge that is disposed of with municipal solid waste. The primary reason for this is chemical interaction between the pollutants in sewage sludge and those in municipal solid waste when disposed together in a landfill. The decomposition of garbage in the landfill results in the production of water-soluble, organic fatty acids (acetic, propionic and butyric) that promote the leaching of metals and other substances from the garbage. Sewage sludge, however, slows this process down, the sludge matrix acting to bind metals in insoluble form, significantly reducing their potential for leaching from the landfill. Understanding of this phenomenon is still preliminary and at this juncture, the Agency cannot measure the extent to which sewage sludge reduces the mobility of metals in landfills. Until it has some scientific basis for quantifying this process, the Agency cannot calculate appropriate limitations for the pollutants in the sludge that is disposed of in the landfill. Compounding the difficulty is the absence of data that would form the basis for conclusion about typical levels of organics and metals in garbage in order to select appropriate parameters for these components of any model. Sludge represents only about five percent of the volume of the total mass being disposed of in the landfill. Without knowledge about the character of the municipal solid waste component to potential leaching, it is impossible to calculate limitations for the sludge pollutants. Because of the interactive effect, it would not be scientifically defensible simply to apportion some percentage of the pollutants to the sludge contribution.

While EPA decided that numerical limitations for co-disposed sewage sludge were not feasible, the Agency determined that the design standards applicable to MSWLFs were adequate to protect human health and the environment. The design and engineering standards will prevent the migration of harmful pollutants from the waste leachate. Further, the rule prescribes corrective measures in the event of migration of pollutants. In these circumstances, EPA concluded that these requirements met the protection standard of section 405.

2. Removal Credits

Many industrial facilities discharge large quantities of pollutants to POTWs, where their wastes mix with wastewater from other industrial facilities, domestic wastes from private residences and run-off from various sources prior to treatment and discharge by the POTW. Industrial discharges frequently contain pollutants that are generally not removed as effectively by POTWs as by the industries themselves.

The introduction of pollutants to a POTW from industrial dischargers potentially poses several problems. The discharges may interfere with a POTW's operation, resulting in inadequate treatment of domestic wastes and sewage. Pollutants may pass through the POTW into navigable waters if they are inadequately treated. Finally, even if partially or fully treated by the POTW and removed from the POTW wastestream prior to discharge, these pollutants may settle in and contaminate the sludges produced by a POTW, causing a sludge disposal problem.

In order to prevent these potential problems, Congress has directed EPA in sections 307(b)–(d) of the CWA (33 U.S.C. 1317(b)–(d)) to establish pretreatment standards to "prevent the discharge of any pollutants through (POTWs), which pollutant interferes with, passes through, or otherwise is incompatible with such works." (33 U.S.C. 1317(b).) Pretreatment standards limit the amount of a pollutant that facilities in an industrial category may introduce into a POTW. (Section 307(d), 33 U.S.C. 1317(d).)

Congress recognized that in certain situations POTWs could provide some or all of the treatment of an industrial user's waste stream that would be required pursuant to the pretreatment standards. Consequently, Congress established a discretionary program for POTWs to grant "removal credits" to the indirect discharger. (33 U.S.C. 1317(b).) The credit, in the form of a less stringent pretreatment standard, allows an increased amount of pollutants to flow from the indirect discharger's plant to the POTW.

Section 307(b) of the CWA establishes a three-part test for obtaining removal credit authority. Removal credits may be awarded only if (1) the POTW "removes all or any part of such toxic pollutant," (2) the POTW's ultimate discharge would "not violate that effluent limitation or standard which would be applicable to such toxic pollutant if it were discharged by such source other than through a POTW, and does not prevent sludge use or disposal by such (POTW) in accordance with section (405) . . ." (Section 307(b), 33 U.S.C. 1317b.)

EPA has promulgated removal credit regulations in 40 CFR part 403. On April 30, 1986, the United States Court of Appeals for the Third Circuit invalidated certain portion of the then-effective removal credit regulations. *NRDC* v. *EPA*, 790 F.2d 289, 292 (3rd Cir. 1986), *cert. denied*, 107 S.Ct. 1285 (1987). Among other determinations, the Third Circuit held that, under section 307(b), EPA may not authorize any POTW to grant removal credits to any indirect discharger until EPA promulgates the comprehensive regulations addressing sewage sludge required by section 405 of the CWA. *NRDC* v. *EPA*, 790 F.2d 289, 292 (3rd Cir. 1986).

Congress made this prohibition explicit in the Water Quality Act of 1987 (WQA). While temporarily staying the

effect of the Third Circuit's decision until August 31, 1987, section 406(e) of the WQA provides that, after that date, EPA shall not authorize any other removal credits until EPA issues the sewage sludge use and disposal regulations required by CWA section 405(d)(2)(a)(ii).

EPA considers the part 258 regulations promulgated today to respond adequately to the Third Circuit's decision and section 406(e) of the WQA in the case of POTWs that dispose of all their sewage sludge through co-disposal in MSWLFs. These regulations comprehensively regulate this sludge disposal method. Consequently, the POTWs that dispose of all their sludge in co-disposal MSWLFs may apply to EPA for removal credits authority after the effective date of today's rule. EPA may grant such authority to any POTW that complies with the procedural and substantive requirements of the removal credits regulations.

Section 403.7(a)(3) of EPA's removal credits regulations provides that a POTW may be authorized to grant removal credits only if "the granting of removal credits will not cause the POTW to violate the local, State, and Federal sludge requirements which apply to the sludge management method chosen by the POTW." "Sludge requirements" are defined in 40 CFR 403.7(a)(1)(ii) to include regulatory requirements under section 405 of the CWA. In the case of sludge co-disposed with municipal solid waste, these requirements are spelled out in today's rule.

As previously stated, today's rule satisfies CWA section 405 requirements through a combination of design and operational criteria in association with monitoring wells and corrective action in the effect of failure. However, in consideration of the practicable capability of facilities to implement the requirements in the rule, the part 258 rule allows MSWLFs to phase in compliance with certain requirements. Thus, while the MSWLFs must comply with most of today's requirements within 24 months of publication, a MSWLF has 30 months to meet the financial responsibility requirements and up to five years after the publication date of today's rule to comply with the rule's groundwater monitoring provisions. Consequently, it is likely that some POTWs will, during the phase-in period, send sewage sludge to MSWLFs that have not yet implemented some of the substantive requirements of the rule. While such a phase-in is appropriate for MSWLFs, EPA has determined that POTWs should not be authorized to grant removal credits until the MSWLF to which the POTW sends its sludge is in compliance with all the part 258 requirements.

The statutory scheme of section 307(b) requires sludge use and disposal standards under section 405 before EPA may authorize removal credits. These standards are the predicate to a determination that an indirect discharge to a POTW is not preventing disposal in accordance with these standards as required by section 307(b). But the mere publication of standards does not entitle a POTW to removal credit authorization. EPA's conclusion that today's rule protects public health and the environment against reasonably anticipated adverse effects—the statutory standard of section 405 of the CWA—is based on the assumption that all the part 258 requirements are in place. Consequently, removal credits are not authorized before the statutory protective level is implemented. As Senator Stafford, one of the sponsors of the Water Quality Act of 1987 has pointed out (132 Cong. Rec. S 16427, daily ed. Oct. 16, 1986):

> * * * Congress intended the existence of sludge regulations, and compliance with those regulations, to be a precondition to the granting of removal credits.

Therefore, under today's rule, in order to obtain removal credits authority, the POTW must send its sludge to an MSWLF that has in place all of today's requirements.

Thus, any co-disposal POTW seeking to obtain removal credits authority must demonstrate that it is disposing of its sewage sludge in an MSWLF that meets all the substantive requirements specified today, including all financial responsibility, ground water monitoring, and corrective action requirements. During the period when an MSWLF is phasing into compliance with the substantive part 258 requirements, a POTW relying on such a facility could not obtain authorization to grant removal credits.

It should be noted that while it is the POTW's responsibility to demonstrate the MSWLF's compliance with part 258, such a demonstration may include a statement from the State or regulatory authority certifying that the MSWLF has implemented all part 258 requirements,[2] including remedial requirements where the need for remediation has been triggered. Removal credits regulations do not preclude an industrial user or other interested party from assisting in preparing and presenting the information required in the POTW's application for removal credits authorization. (40 CFR 403.7(e)(7)).

V. Summary of Amendments to Part 257

Today's final rule specifies amendments to 40 CFR part 257 that include conforming changes to part 257 that make it consistent with the proposed part 258, including an update to the maximum contaminant levels listed in appendix I of part 257. This section describes these amendments and the Agency's response to major comments received on the proposal.

A. Conforming Changes to Part 257

Today's action adds municipal solid waste landfills to the list of exceptions to the part 257 Criteria contained in § 257.1(c). Because MSWLFs will now be covered by the part 258 Criteria, they are no longer subject to the part 257 Criteria that are generally applicable to solid waste disposal facilities and practices. The part 257 Criteria are otherwise unchanged with respect to their applicability, and remain in effect for all other facilities and practices.

Today's rule also amends part 257 to include definitions of the types of solid waste disposal facilities regulated by the part 257 Criteria: Landfills, surface impoundments, land application units, and waste piles. These new definitions clarify that these types of solid waste disposal facilities are subject to part 257.

Finally, today's action makes certain conforming changes to § 257.3–4, which currently specifies that a facility or practice shall not contaminate underground drinking water sources beyond the solid waste boundary. For purposes of this requirement, contamination is defined as concentrations of substances exceeding maximum contaminant levels, contained in appendix I to part 257, developed by EPA under section 1412 of the Safe Drinking Water Act. Today's action revises appendix I to incorporate additional MCLs established by EPA. Pursuant to the 1986 amendments to the SDWA, EPA is in the process of promulgating more MCLs. Part 257 will be revised again in conjunction with promulgation of these new MCLs. This

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[2] On February 6, 1989, EPA proposed standards (to be codified at 40 CFR part 503) for sewage sludge use and disposal under section 405 of the Clean Water Act, 33 U.S.C. 1365. 54 FR 5745. Specific standards were not proposed for sewage sludge disposed in MSWLFs. Rather, the proposal explained that co-disposed sludge would be regulated under the part 258 criteria that would include requirements for the disposal of sewage sludge in an MSWLF. In the part 503 standards, the Agency proposed and requested comment on a requirement that co-disposing POTWs send their sludge to State-permitted MSWLFs.

same approach will be used to update the MCLs used today in part 258.

Today's rule (both part 257 and part 258) uses the current Maximum Contaminant Level for lead of 50 ppb. The Agency recognizes that today's rule does not incorporate changes to the lead MCL established by EPA in a recently promulgated drinking water regulation (56 FR 26460; June 7, 1991). This regulation rescinds the current MCL of 50 ppb for lead as of November 9, 1992, and establishes a technology-based treatment standard. It does not establish a new MCL for lead. The Agency is currently evaluating how to incorporate this recent change in this and other Agency rules that use the current lead MCL of 50 ppb. EPA will propose necessary changes to today's rule once this evaluation is completed.

B. Notification and Exposure Information Requirements

The proposed amendments to part 257 (53 FR 33328; August 30, 1988) included a notification and exposure information requirement for certain solid waste disposal facilities. Under this proposed requirement, EPA intended to obtain notification and exposure information from a set of industrial solid waste disposal facilities that are of concern, including: Industrial landfills, surface impoundments, land application units, waste piles, and construction/demolition waste landfills. For reasons set forth below, EPA intends to proceed immediately with an alternative information gathering strategy that more clearly defines potential problems by seeking more useful information than was proposed in the notification requirement. The Agency is currently developing the components of that strategy. It may include, for example: An industry-wide statistical survey that will help set priorities for government action. EPA will pursue this information gathering strategy in lieu of the proposed notification requirement.

These facilities are of concern to the Agency because they represent a large and diverse set of solid waste disposal facilities that may receive quantities of small quantity generator and household hazardous waste, and some may pose a threat to human health and the environment. Evaluation of the potential threats at these facilities is further compounded because of limited facility design and monitoring criteria. The scope of the industrial nonhazardous waste problem is discussed in more detail in EPA's 1988 Report to Congress on Solid Waste Disposal in the United States.

The information that EPA proposed to require from these facilities in the notification consisted of two parts, including:

(1) A one-time notification that solicited information about facility owners, locations, amounts and types of wastes handled, and waste disposal practices applicable to existing facilities, and

(2) Exposure information indicating the number of households located within one mile of the facility and the number or ground-water monitoring wells at the facility.

The notification requirement was to be a preliminary step in assembling information that would enable EPA to identify the universe of facilities, and at the same time serve to remind the owners and operators of industrial solid waste disposal facilities that they are still subject to the existing part 257 criteria. The results of the notification requirements would also be used to design subsequent more specific information collection strategies for the development of any future program actions covering these facilities.

The notification and exposure information requirements were intended to update and supplement information that EPA had previously collected on the identity of facilities and their waste management practices. For example, in 1987 EPA conducted a stratified survey of 18,051 establishments from 17 different standard industrial categories (SICs), (see draft EPA report, Screening Survey of Industrial Subtitle D Establishments, available in the RCRA docket). This survey was based on information obtained from Dun's Marketing, Inc., which included establishment name, location, SIC codes, and other financial information. The result of this survey provided EPA with national and industry-specific estimates on:

- The number of establishments that manage industrial subtitle D waste on site;
- The number of establishments that manage subtitle D waste on site in landfills, surface impoundments, land application units, and waste piles;
- The number of landfills, surface impoundments, land application units, and waste piles used to manage industrial subtitle D waste; and
- The quantity of industrial Subtitle D waste managed on site in land-based waste management units.

EPA estimated that 72,400 establishments managed about 7 billion metric tons of industrial solid waste in 1985, and an estimated 20 percent of 12,000 establishments used at least one type of land-based waste disposal unit to manage waste. Further, about 99 percent of the industrial solid waste is generated and managed on site by facilities within the 17 SICs surveyed.

In its Report to Congress (Ref. 1), EPA stated its belief that, based on the information EPA collected to date, industrial hazardous waste facilities as a class may pose a threat to human health and the environment. However, additional information would be needed to evaluate the nature and extent of that threat. In the proposal, EPA proposed to begin the process of collecting additional information on these facilities by first establishing a baseline facility inventory through the proposed facility notification requirement. The notification was planned as a first step in an information collection process. EPA would use information received from the notification requirement to update and supplement facility inventory data that were already available to EPA to more accurately define the size of the nonhazardous waste management facility universe. The inventory would aid EPA in targeting categories of facilities for more detailed information collection that may be needed for the development of future waste management or other Agency program actions.

As a result of public comments on the proposed notification requirement, and additional information that has become available since the proposed rulemaking, EPA has changed its thinking on how best to collect needed information to characterize problems and set priorities for addressing this diverse universe of waste handlers. Some commenters argued that, because of the diverse nature of industrial solid waste, more detailed information about the physical and chemical characteristics of the waste would be needed to assess potential risks and support any development of waste management guidelines, than was present on the proposed notification form. More detailed information might include specific data on hazardous constituents contained in the waste, disposal facility size and location, ground-water monitoring information, and other detailed facility-specific information. The Agency agrees with the commenters arguments concerning the scope of data elements necessary.

In addition to this information, the General Accounting Office (GAO) completed a recent report [3] (Ref. 10) that

[3] GAO examined ground-water monitoring data from 112 industrial solid waste disposal facilities in California and New Jersey. State officials reported that 68 (61 percent) of the 112 facilities studied indicated ground-water contamination (i.e., constituents at levels above the State's standards or

Continued

confirmed the assessment of environmental threats made earlier by EPA in its Report to Congress (Ref. 1). This GAO report further emphasizes these findings using the results of an analysis of a study of 112 facilities in two states.

EPA believes the public comments received on the proposed notification, together with EPA's earlier findings concerning health threats and the findings in GAO's report, provide a compelling case to move forward more expeditiously than was previously proposed toward a more comprehensive information collection strategy to better understand the risks posed by these facilities and to assess the need for any future program actions by the Agency.

EPA believes that, while the notification requirement proposed in the 1988 proposal would provide EPA with better information than it currently has on the baseline inventory of facilities, it would not provide sufficient information needed to characterize potential problems and evaluate the need for future Agency action. Further, the time and resources required to complete this notification process would delay EPA's ability to accelerate a more detailed information collection effort for industrial nonhazardous waste management facilities. EPA would have to expand the notification requirements significantly to gather data that are believed to be needed.

Instead of expanding the data requirements of the notification, the Agency has, therefore, chosen to eliminate the notification and exposure information requirements in § 257.5 of today's final rule in order to move forward expeditiously on a more comprehensive information collection effort. As mentioned in the introduction to this section, the elements under consideration include:

—An industry-wide statistical survey that will help set priorities for government action

—Facility specific case studies to better understand facility operations, waste generation and waste management practices, and

—An understanding of State program requirements and accomplishments, since States will undoubtedly remain the front-line government agencies in day to day environmental management.

EPA anticipates that this approach will provide the Agency with the flexibility and capability to better understand the specific relative health and environmental risks posed by the broad range of facilities and wastes under study.

VI. Summary of Part 258

The following is a summary of each subpart of part 258. A detailed discussion of major comments received on each subpart of the proposal and the Agency's response to these comments is contained in Appendices B–H.

A. Subpart A—General

Subpart A contains the purpose, scope, applicability, and effective date of part 258 (§ 258.1). It provides definitions necessary for the proper interpretation of the rule (§ 258.2), and indicates that there are other Federal laws and regulations with which an owner or operator of a MSWLF must comply (§ 258.3).

The purpose of part 258 is to establish minimum national criteria for municipal solid waste landfills, including MSWLFs used for sludge disposal and disposal of nonhazardous municipal waste combustion (MWC) ash (whether the ash is co-disposed or disposed of in an ash monofill). Part 258 sets forth minimum national criteria for the location, design, operation, cleanup, and closure of MSWLF units. The rule provides that States will have flexibility in implementing these criteria, where States wish to run the program. A MSWLF unit that does not meet the part 258 Criteria will be considered to be engaged in the practice of "open dumping" in violation of section 4005 of RCRA. MSWLF units that receive sewage sludge and fail to satisfy these criteria will be deemed to be in violation of sections 309 and 405(e) of the Clean Water Act.

Figure 1 depicts the decisionmaking process that owners and operators of MSWLF units should use to determine the applicability of part 258 requirements to MSWLF units. As indicated in the figure, the Criteria do not apply to owners and operators of MSWLFs that have stopped receiving waste prior to October 9, 1991 (see § 258.1(c)). Owners and operators of MSWLFs that stop receiving waste between October 9, 1991 and October 9, 1993 are exempt from all of the requirements of part 258 except the final cover requirements cited in § 258.1(d). Finally, MSWLFs that receive waste on or after the effective date of today's rule October 9, 1993 must comply with all provisions of part 258 on the effective date with two exceptions. They are (1) the ground-water monitoring provisions of subpart E, which are phased in over a five-year period beginning on the date of publication of today's Rule, and (2) the financial responsibility provisions of subpart G, which are effective 30 months after the date of publication of today's Rule.

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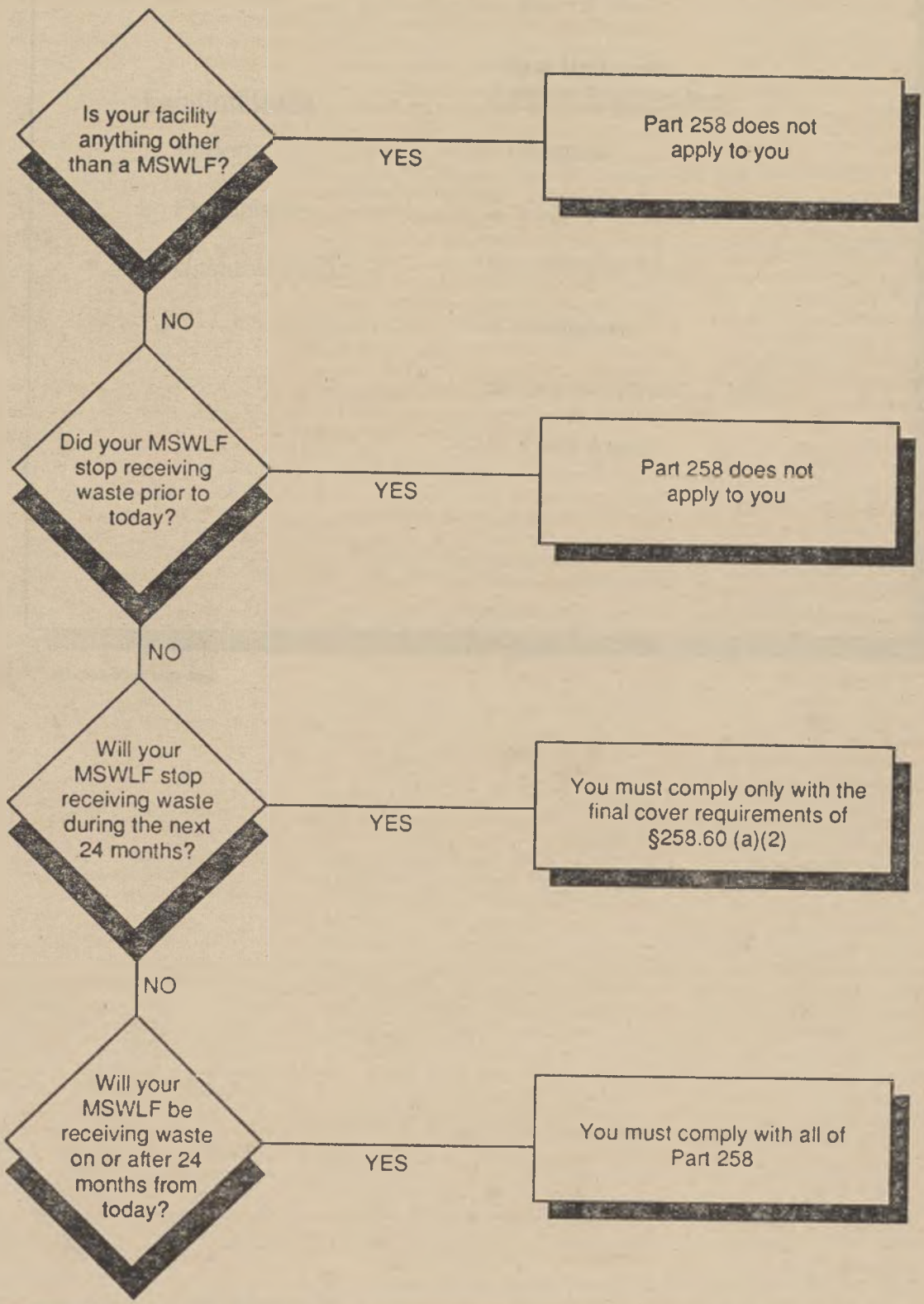
prescribed limits.) At 32 (29 percent) of the 112 facilities, the known or suspected source of ground-water contamination was an industrial landfill, surface impoundment, or construction/demolition debris landfill.

Figure 1

What requirements apply to my MSWLF?



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B. Subpart B—Location Restrictions

Subpart B of today's rule establishes six location restrictions applicable to MSWLF units. As shown in Figure 2, certain of these location restrictions are applicable to existing units. All of today's location restrictions require the owner or operator to demonstrate that they meet the specific criteria. The owner or operator must place these demonstrations in the operating record and notify the State Director.

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Figure 2

Which Location Restrictions Apply to my MSWLF?

Existing Units	New Units and Lateral Expansions
1. Airports	1. Airports
2. Floodplains	2. Floodplains
3. Unstable Areas	3. Unstable Areas
	4. Wetlands
	5. Seismic Impact Zones
	6. Fault Areas

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1. Section 258.10 Airport Safety

Under today's rule, owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions located within 10,000 feet (3,048 meters) of any airport runway end used by turbojet aircraft or within 5,000 feet (1,524 meters) of any airport runway end used only by piston-type aircraft must demonstrate that the unit does not pose a bird hazard to aircraft. The owner or operator must notify the State Director (as with all of today's demonstrations) that the demonstration has been placed in the operating record.

In addition, today's rule requires that owners or operators proposing new MSWLF units or lateral expansions within a five-mile radius of any airport runway end used by turbojet or piston-type aircraft must notify the affected airport and the appropriate Federal Aviation Administration (FAA) office. This procedural requirement is consistent with existing FAA Order 5200.5A.

2. Section 258.11 Floodplains

The floodplain provision applies to new MSWLF units, lateral expansions, and existing MSWLF units located in 100-year floodplains. These MSWLF units may not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in the washout of solid waste so as to pose a hazard to human health or the environment.

3. Section 258.12 Wetlands

Today's wetland provisions apply only to new units and lateral expansions of existing units; they do not apply to existing units. New MSWLF units or lateral expansions of MSWLF units are barred from wetlands unless the owner or operator can make the following demonstrations to the Director of an approved State. First, the owner or operator must rebut the presumption that a practicable alternative to the proposed landfill is available that does not involve wetlands. Second, the owner or operator must show that the construction or operation of the landfill will not cause or contribute to violations of any applicable State water quality standard, violate any applicable toxic effluent standard or prohibition, jeopardize the continued existence of endangered or threatened species or critical habitats, or violate any requirement for the protection of a marine sanctuary. Third, the owner or operator must demonstrate that the MSWLF unit will not cause or contribute to significant degradation of wetlands. To this end, the owner or operator must ensure the integrity of the MSWLF unit, minimize impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste, and assure that the ecological resources in the wetland are sufficiently protected. Fourth, the owner or operator must demonstrate that steps have been taken to attempt to achieve no net loss of wetlands by first avoiding impacts to wetlands to the maximum extent practicable, then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions.

Because this demonstration must be approved by the Director of an approved State, this provision effectively bans the siting of new MSWLF units and lateral expansions in wetlands in States that do not have an EPA-approved permitting program.

On August 9, 1991, the Administrator announced a comprehensive plan for the protection of the Nation's wetlands. Included were a number of actions to improve the workability of the Clean Water Act section 404 regulatory program, which regulates the discharge of dredged or fill material into wetlands. Among these changes will be the development of wetlands categories by an interagency technical committee based on wetland value. After such a categorization scheme is developed, the mitigation sequence (i.e., avoidance, minimization, and then compensation) will be retained for the high value wetlands category, and projects in other wetland categories will be required to offset wetlands losses through compensatory mitigation. When such wetlands categories are identified, the above changes to the section 404 permitting program will be implemented through amendment of applicable legal authorities. Section 258.12 of today's rule is consistent with regulatory provisions currently governing the section 404 program. When the section 404 regulatory program is modified in accordance with the Administrator's wetlands protection program, relevant portions of this rule will be modified accordingly.

Furthermore, four agencies have recently published proposed revisions to a technical guidance document implementing the current regulatory definition of wetlands, and the agencies will shortly be proposing to codify portions of that document in the Code of Federal Regulations. See 56 FR 40446 (Aug. 14, 1991). The definition of wetlands contained in § 258.12 of today's rule reflects the Agency's current definition under the section 404 program. See 40 CFR 232.2(r). When the agency proposes amendments to the definition of wetlands under the section 404 program, such changes will also be proposed for the definition contained in § 258.12 of today's rule.

4. Section 258.13 Fault Areas

Today's rule bans the location of new MSWLF units and lateral expansions within 200 feet (60 meters) of faults that have experienced displacement during the Holocene Epoch. In States with approved programs, the owner or operator may site within the 200-foot zone if the owner or operator demonstrates to the Director of an approved State that an alternative setback distance of less than 200 feet will prevent damage to the structural integrity of the MSWLF unit and will be protective of human health and the environment.

5. Section 258.14 Seismic Impact Zones

Today's rule bans the location of new MSWLF units and lateral expansions in seismic impact zones. In States with approved programs, owners or operators may locate new MSWLF units and lateral expansions in a seismic impact zone if they successfully demonstrate to the Director of an approved State that the unit is designed to resist the maximum horizontal acceleration in lithified material for the site. The design features to be protected include all containment structures (i.e., liners, leachate collection systems, and surface water control systems). For purposes of this requirement, seismic impact zones are defined as areas having a 10 percent or greater probability that the maximum expected horizontal acceleration in hard rock, expressed as a percentage of the earth's gravitation pull (g), will exceed 0.10g in 250 years.

6. Section 258.15 Unstable Areas

Owners or operators of new MSWLF units, lateral expansions, and existing MSWLF units located in unstable areas must demonstrate to the State Director's satisfaction that the integrity of the structural components of the unit will not be disrupted. The demonstration must show that the structural components of the MSWLF can withstand the impacts of establishing events, such as landslides. The structural components include liners, leachate collection systems, final cover systems, run-on and run-off control systems, and any other component used in the construction and operation of the MSWLF unit that is necessary for

protection of human health and the environment.

7. Section 258.16 Closure of Existing Units

Today's rule requires owners and operators of existing MSWLF units that cannot make the airport safety, floodplain, or unstable area demonstrations required under §§ 258.10(a), 258.11(a), or 258.15(a) to close the MSWLF unit within five years of the date of publication of this rule unless the Director of an approved State extends the deadline. The Director of an approved State may extend the deadline for up to two years, but only after considering the availability of alternative waste disposal capacity and the potential risk to human health and the environment.

C. Subpart C—Operating Criteria

Subpart C of today's rule establishes operating requirements for new MSWLF units, existing MSWLFs, and lateral expansions. Figure 3 lists these operating requirements, each of which is explained briefly below.

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Figure 3

OPERATIONAL REQUIREMENTS

All owners/operators must:

- Exclude the receipt of hazardous waste
- Provide daily cover
- Control on-site disease vectors
- Provide routine methane monitoring
- Eliminate most open burning
- Control public access
- Construct run-on and run-off controls
- Control discharges to surface water
- Cease disposal of most liquid wastes
- Keep records that demonstrate compliance

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1. Section 258.20 Procedures for Excluding the Receipt of Hazardous Waste

Today's rule requires owners or operators of all MSWLF units to implement a program at the facility for detecting and preventing the disposal of regulated quantities of hazardous wastes and polychlorinated biphenyl (PCB) wastes. This program must include random inspections of incoming loads, records of any inspections, and training of facility personnel to recognize regulated hazardous waste and PCB wastes, and notification to States with authorized RCRA subtitle C programs or the EPA Regional Administrator in an unauthorized State if a regulated hazardous waste or PCB wastes are discovered at the facility.

2. Section 258.21 Cover Material Requirements

Today's rule requires owners or operators of all MSWLF units to cover disposed solid waste with at least six inches of earthen materials at the end of each operating day. Daily cover is necessary to control disease vectors, fires, odors, blowing litter, and scavenging. The Director of an approved State can temporarily waive the daily cover requirement during extreme seasonal climate conditions and may allow alternative materials to be used as daily cover material.

3. Section 258.22 Disease Vector Control

Today's rule requires owners or operators of all MSWLF units to prevent or control on-site disease vector populations using appropriate techniques to protect human health and the environment.

4. Section 258.23 Explosive Gases Control

Today's rule requires the owners or operators of all MSWLF units to ensure that the concentration of methane generated by the MSWLF not exceed 25 percent of the lower explosive limit (LEL) in on-site structures, such as scale houses, or the LEL itself at the facility property boundary. The owner or operator must implement a routine methane monitoring program, with at least a quarterly monitoring frequency. If the methane concentration limits are exceeded, the owner or operator must notify the State Director within seven days that the problem exists and submit and implement a remediation plan within 60 days.

5. Section 258.24 Air Criteria

Section 258.24(a) requires owners or operators of all MSWLF units to comply with applicable requirements of State Implementation Plans (SIPs) developed under section 110 of the Clean Air Act (CAA). Open burning is prohibited except in limited circumstances, which include the infrequent burning of agricultural wastes, silvicultural wastes, land-clearing debris, diseased trees, or debris from emergency clean-up operations.

6. Section 258.25 Access Requirements

Section 258.25 requires owners or operators of all MSWLF units to control public access to MSWLF units and to prevent illegal dumping of wastes, public exposure to hazards at MSWLFs, and unauthorized vehicular traffic.

7. Section 258.26 Run-on/Run-off Control Systems

Section 258.26 requires owners or operators of all MSWLF units to design, construct, and maintain run-on and run-off control systems to prevent flow onto and control flow from the active portion of the MSWLF unit. Run-off from the active portion of the unit must be handled in accordance with the surface water requirements of today's rule.

8. Section 258.27 Surface Water Requirements

Under today's rule, all MSWLF units must be operated in compliance with National Pollutant Discharge Elimination System (NPDES) requirements, established pursuant to section 402 of the Clean Water Act. Any discharges of a nonpoint source of pollution from an MSWLF unit into waters of the United States must be in conformance with any established water quality management plan developed under the Clean Water Act.

9. Section 258.28 Liquids Restrictions

In today's rule, the disposal of bulk or noncontainerized liquid wastes in MSWLF units is prohibited, with two exceptions: (1) The waste is household waste (other than septic waste) and (2) the waste is leachate or gas condensate that is derived from the MSWLF unit, and the MSWLF unit is equipped with a composite liner and leachate collection system.

Containers of liquid waste can be placed in MSWLF units only when the containers (1) are small containers similar in size to that typically found in household waste; (2) are designed to hold liquids for use other than storage; or (3) hold household waste. "Liquid waste" is defined in today's rule as any waste material determined to contain free liquids as defined by Method 9095 "Paint Filter Liquids Test".

10. Section 258.29 Recordkeeping Requirements

Today's rule requires that the documents and records required under this Part be retained near the facility in an operating record by the owner or operator of each MSWLF unit. (An alternative location may be approved by the Director of an approved State.) These documents are listed in § 258.29(a) of today's rule. Upon completion of each document required in the operating record, the owner or operator must notify the State Director of its existence and its addition to the operating record. Furthermore, all information contained in the operating record must be furnished upon request or be made available at all reasonable times for inspection by the State Director.

Today's rule allows the Director of an approved State to set alternative schedules for the recordkeeping and notification requirements specified in the rule except the notification requirements in § 258.10(b) pertaining to the notification of the FAA by owner/operators planning to site a new or lateral expansion of a MSWLF within a 5-mile radius of an airport, and § 258.55(g)(1)(iii) pertaining to the notification of persons who own land or reside on land overlying a plume of ground-water contamination.

D. Subpart D—Design Criteria

Subpart D of today's rule establishes facility design requirements applicable to new MSWLF units and lateral expansions. These requirements do not apply to existing units.

Today's final design criteria provide owners and operators with two basic design options: A site-specific design that meets the performance standard in today's rule and is approved by the Director of an approved State or a composite liner design. These two design options are depicted graphically in Figure 4.

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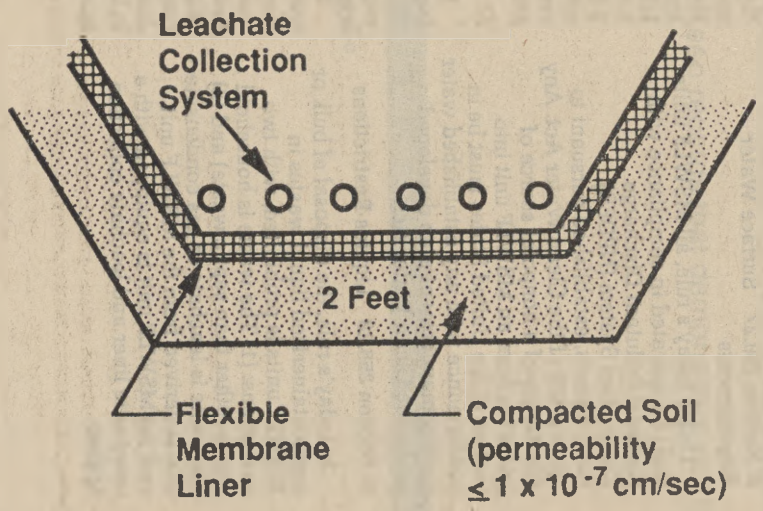
Figure 4

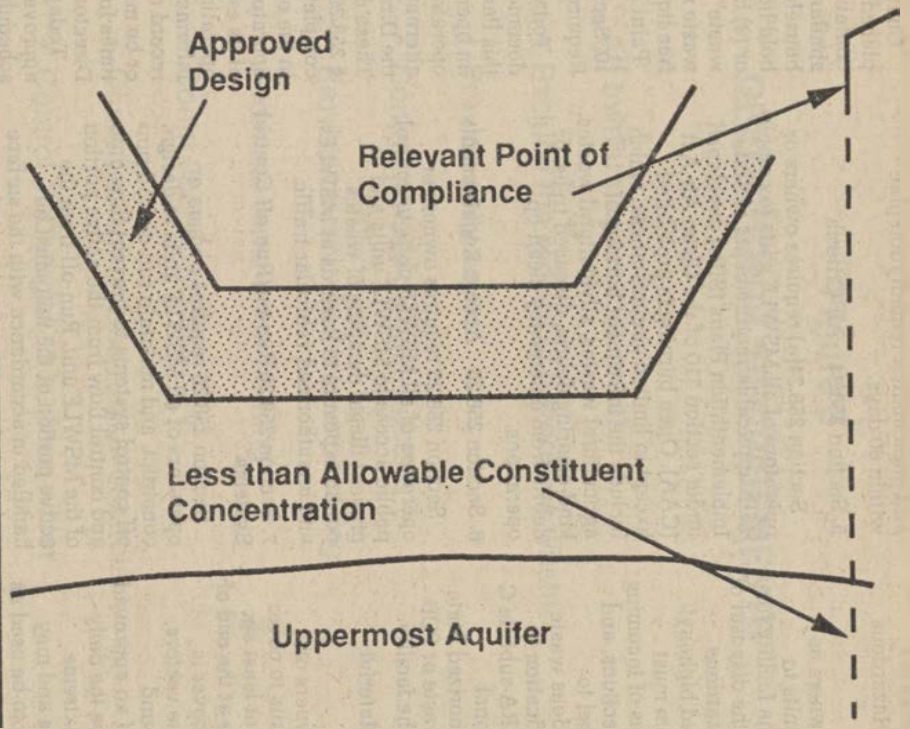
DESIGN CRITERIA

New MSWLF units and lateral expansions must have one of the following designs:

COMPOSITE LINER AND LEACHATE COLLECTION SYSTEM DESIGN



DESIGN THAT MEETS PERFORMANCE STANDARD AND APPROVED BY AN APPROVED STATE



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The first option, which is available in approved States, allows owners or operators to consider site-specific conditions in developing a design that must be approved by the Director of an approved State. This design must meet the performance standard in § 258.40, which requires that the design ensure that the MCLs (Table 1 of today's rule) will not be exceeded at the relevant point of compliance.

When evaluating whether designs meet the performance standard, the approved States must consider a number of site-specific factors, such as the climate and hydrogeology of the site. For example, in areas where ground water is vulnerable, the State may require a composite liner system. In other areas where ground water is less vulnerable, the State may determine that a less comprehensive design meets the performance standard. State program approvals will be established in accordance with the "State Implementation Rule," expected to be proposed in early 1992.

The second option, the composite liner system, is required only for landfills located in States without EPA approved programs. The composite liner system is designed to be protective in all locations, including poor locations. It consists of a composite liner, including a flexible membrane liner and a compacted soil component, and a leachate collection and removal system.

EPA is concerned that certain owner/operators of new units or lateral expansions may be forced to use the design standard in § 258.40(a)(2) in situations where the composite liner specified in that section is not necessary to protect human health and the environment, and their state does not have program approval. In these cases the performance standard under § 258.40(a)(1) may be more appropriate since it would potentially avoid an unnecessarily stringent design. Therefore, the Agency has established a petition process in § 258.40(e). This process allows the owner/operator to use the performance standard in § 258.40(a)(1) if the State determines that the owner/operator's design meets the performance standard, and the State petitions EPA to review its determination, and EPA either approves the design or does not disapprove the design within 30 days of receipt.

Additional discussion regarding today's design criteria can be found in sections IV.B and IV.C and appendix D of this preamble.

E. Subpart E—Ground-Water Monitoring and Corrective Action

a. To Whom Does This Requirement Apply?

Today's rule requires a system of monitoring wells to be installed at new units, lateral expansions, and existing MSWLF units. Owners and operators of landfills that qualify for the small community exemption are not required to comply with the requirements of this subpart. In addition, today's rule provides for limited waivers for owners or operators who can demonstrate to the Director of an approved State that the MSWLF unit is located above a hydrogeologic setting that will prevent hazardous constituent migration to ground water during the active life of the unit, as well as during facility closure and throughout the post-closure period (§ 258.50(b)).

b. When Must Ground-Water Monitoring be in Place?

New MSWLF units must have ground-water monitoring systems in place prior to accepting waste. The schedule for installing the ground-water monitoring system at existing MSWLF units and lateral expansions is dependent upon the location of the landfill with respect to the nearest drinking water intake (§ 258.50(c)).

Today's rule allows the Director of an approved State to establish an alternative compliance schedule for phasing in the ground-water monitoring requirements at existing MSWLF units. This alternative schedule provides that all existing MSWLF units will be required to have ground-water monitoring systems by October 9, 1996 (§ 258.50(d)).

c. What Criteria Must the Ground-Water Monitoring System Meet?

The ground-water monitoring system must consist of a sufficient number of appropriately located wells able to yield ground-water samples from the uppermost aquifer that represent the quality of background ground water and the quality of ground water passing the relevant point of compliance as specified by the Director of an approved State (§ 258.51). Each MSWLF unit is required to have a separate ground-water monitoring system unless the Director of an approved State allows multi-unit ground-water monitoring systems based on consideration of several factors. Monitoring wells must be cased in a manner maintaining the integrity of the bore hole and must be maintained so as to meet design specifications. The number, spacing, and depths of monitoring wells may be based on site-specific characteristics, but each ground-water monitoring system must be certified as adequate by a qualified ground-water scientist or approved by the Director of an approved State.

d. What are the Procedures for Sampling and Analysis?

The rule provides procedures for sampling monitoring wells and methods for the statistical analysis of ground-water monitoring of hazardous constituents released from the MSWLF (§ 258.53). Requirements are included for determination of ground-water elevations, background ground-water quality, and the number of samples to be collected.

e. What are the Steps in the Ground-Water Monitoring and Corrective Action Programs?

Today's monitoring and corrective action provisions include three steps, which are depicted in Figure 5. In the first step, today's rule requires owners or operators of MSWLFs to establish background concentrations and sample at least semiannually during the active life of the facility, closure, and post-closure periods for a set of detection monitoring indicator parameters (§ 258.54). These indicator parameters include 47 volatile organic compounds and 15 metals (see Appendix I). The Director of an approved State may delete any of the constituents in Appendix I if it can be determined that a constituent is not reasonably expected to be contained in or derived from the waste contained in the unit. In addition, the Director of an approved State may establish an alternative list of inorganic indicator parameters for a MSWLF unit, in lieu of some or all of the heavy metals (constituents 1–15 in Appendix I), if the alternative parameters provide a reliable indication of inorganic releases from the MSWLF unit to the ground water. The Director of an approved State also may specify an alternate frequency for repeated sampling of Appendix I constituents during the active life of the MSWLF, and during post-closure. The alternative frequency during the active life must be no less than annual.

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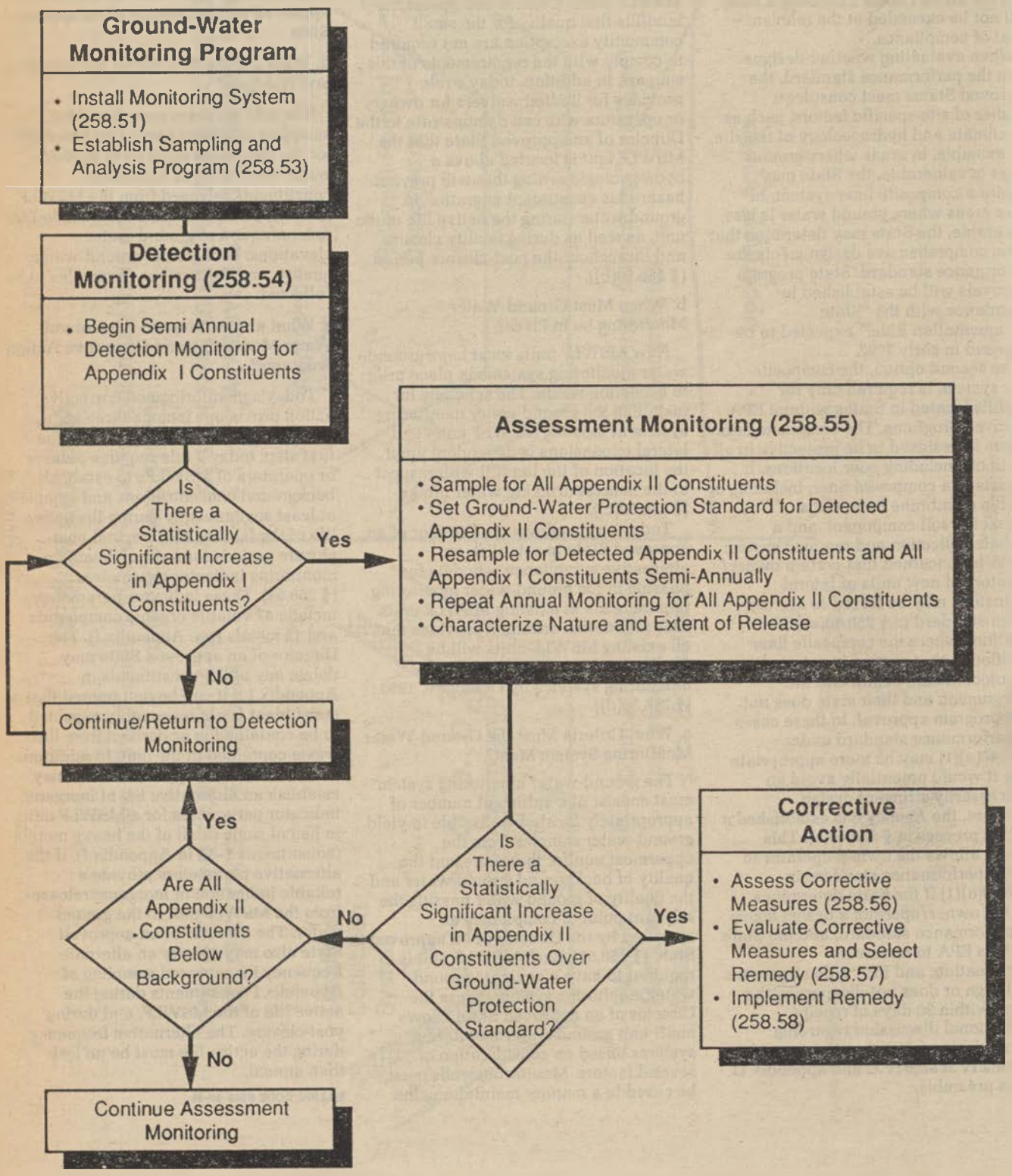
Figure 5

Ground-Water Monitoring and Corrective Action



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If any of the detection monitoring parameters are detected at a statistically significant level over the established background concentrations, the owner or operator must move to the second step, assessment monitoring, and notify the State Director. After determining a statistically significant increase over background concentrations, the owner or operator must establish an assessment monitoring program unless he or she can demonstrate, based on certification by a qualified ground-water scientist (or approval of the Director of an approved State), that the contamination has resulted from a source other than the landfill or that the increase resulted from an error in sampling, analysis, statistical evaluation, or natural variation in ground-water quality.

Assessment monitoring (§ 258.55) requires annual analysis for the full list of hazardous constituents included in appendix II. However, the Director of an approved State may specify an alternative frequency for annual sampling and analysis of the full list of appendix II constituents, and may specify an appropriate subset of wells for the annual appendix II analysis. The Director of an approved State also may modify the list of constituents in appendix II if it can be determined that a constituent is not reasonably expected to be in or derived from the waste contained in the unit.

If any appendix II constituents are detected, in either the initial or repeated appendix II analyses, the owner or operator must notify the State Director and continue to monitor, at least semiannually, for those constituents in appendix II that were detected. The Director of an approved State may specify an alternative frequency other than semiannual. If the owner or operator demonstrates, at any time during assessment monitoring, that all of the detected appendix II constituents are at or below background values for two consecutive sampling events, he must notify the State and may return to detection monitoring.

For each appendix II constituent that is detected, background concentrations and a ground-water protection standard (GWPS) must be set. The GWPS must be the MCL or background concentration level for the detected constituent. However, the Director of an approved State may set an alternative GWPS based on criteria defined in today's rule. The owner or operator must compare the levels of those detected appendix II constituents to the appropriate GWPS. If subsequent monitoring indicates a statistically significant increase over the GWPS, the owner or operator is required to notify the State Director and local officials and characterize the nature and extent of contamination. The owner or operator must make a best effort to characterize the nature and extent of the plume, including the delineation of the plume off site. As part of characterizing the nature and extent of the release, the owner or operator must install additional wells, if necessary. At least one well, however, must be installed at the facility boundary in the direction of contaminant migration in order to ascertain whether or not the contaminants have migrated past the facility boundary. If contamination has migrated off-site, the owner or operator must notify individuals who own land or reside on land overlying the plume.

The owner or operator must then evaluate alternative corrective measures (§ 258.56) and select the appropriate remedy (§ 258.57). During this phase, the owner or operator is required to continue at least semiannual monitoring (or an alternative frequency no less than annual) for all appendix I constituents (or an alternative list approved by the Director of an approved State) and for those appendix II constituents exceeding the GWPS. As part of evaluating potential remedies, the owner or operator must hold a public meeting to discuss the remedies under consideration (prior to selecting a final remedy). Once the owner or operator has selected a remedy, he must place a description of the selected remedy in the operating record and notify the State Director.

The Director of an approved State may determine, however, that remediation of a release is not necessary if: (1) The ground water is contaminated by multiple sources and cleanup of the contamination resulting from the MSWLF will provide no significant reduction in risk; (2) the contaminated ground-water is not currently or reasonably expected to be a source of drinking water and is not hydraulically connected to other waters; (3) remediation is not technically feasible; or (4) unacceptable cross-media impacts would result from remediation.

After the remedy has been selected, the owner or operator is required to implement the corrective measure, establish a corrective action ground-water monitoring program, and take any necessary interim measures (§ 258.58). During implementation of the corrective measure, the owner or operator may determine that a requirement for the remedy cannot be met. In this situation, the owner or operator must obtain certification of a qualified ground-water scientist (or approval of the Director of an approved State) that the requirement cannot be met, notify the State Director, and implement an alternate measure.

Once implemented, corrective action must continue until the owner or operator achieves compliance with the GWPS for a period of three consecutive years or an alternate period of time determined by the Director of an approved State. Upon completion, the owner or operator must obtain certification that the remedy is complete from a qualified ground-water scientist (or approved by the Director of an approved State) and notify the State Director.

F. Subpart F—Closure and Post Closure-Care

Today's rule requires owners or operators of new MSWLF units, lateral expansions, and existing MSWLF units to close each unit in accordance with specified standards and to monitor and maintain the units after closure. In addition, the rule requires all owners or operators to prepare closure and post-closure plans describing these activities and to comply with a minimum set of procedural requirements.

1. Closure Requirements

All owners or operators of MSWLF units must install a final cover designed to minimize infiltration and erosion. The infiltration layer must be a minimum of 18 inches of earthen material that has a permeability less than or equal to the permeability of the bottom liner system or natural subsoils, or no greater than $1 \times 10-5$ cm/sec, whichever is less. The erosion layer must be a minimum of six inches of earthen material that can sustain native plant growth. The Director of an approved State may allow an alternative cover design if the cover layers achieve the same objectives as the specified design in the final rule.

2. Post-Closure Care Requirements

Today's rule requires all owners or operators to conduct post-closure care activities for a period of 30-years after the closure of each MSWLF unit. The Director of an approved State may either reduce the 30–year post-closure period if the Director determines a shorter period will be protective of human health and the environment or increase the post-closure care period if he/she determines that a lengthened period is necessary to protect human health and the environment. During the post-closure care period, all owners or operators of MSWLF units must

maintain the integrity and effectiveness of the final cover, and continue ground-water monitoring, gas monitoring, and leachate management.

3. Planning Requirements

Today's rule also requires owners or operators of MSWLF units to prepare closure and post-closure plans describing activities that will be undertaken to properly close each MSWLF unit and maintain them after closure. These plans must be prepared and placed in the facility operating record no later than the effective date of today's rule, or by the initial receipt of waste, whichever is later.

The closure and post-closure care standards also include certain procedural requirements. First, prior to closing each landfill unit, an owner or operator must notify the State Director and include the notification in the facility operating record. Second, the owner or operator must begin closure of a landfill unit within 30 days after the final receipt of waste and complete closure within 180 days. Extensions of both of these deadlines may be granted only by the Director of an approved State and only if certain criteria are met. Third, following closure of the last landfill unit, owners or operators of all MSWLF units must record a notation in the deed to the property, that indicates that the property has been used as an MSWLF unit and that its use is restricted. Finally, owners or operators of all MSWLFs must notify the State Director and place in the facility operating record a certification signed by an independent registered professional engineer (or approved by the Director of an approved State) that verifies that closure and post-closure care activities have been conducted in accordance with the closure and post-closure plans.

G. Subpart G—Financial Assurance Criteria

Today's rule requires owners or operators of all new MSWLFs, lateral expansions, and existing MSWLF units, except those owned or operated by State or Federal government entities, to demonstrate financial responsibility for the costs of closure, post-closure care, and corrective action for known releases.

Today's rule requires owners or operators of MSWLF units to demonstrate financial responsibility for closure, post-closure care, and corrective action for known releases in an amount equal to the cost of a third party conducting these activities. The cost estimates must be updated annually for inflation and whenever operation or design changes increase the costs at the MSWLF unit. An owner or operator may reduce his cost estimates and the amount of financial responsibility provided he places a justification for the reduction in the estimate in the operating record and notifies the State Director.

Today's rule includes a list of specific financial mechanisms that may be used to demonstrate financial responsibility, as well as criteria for judging whether other mechanisms are acceptable. The rule permits the use of a trust fund with a pay-in period, surety bond, letter of credit, insurance, State-approved mechanism, and State assumption of responsibility.

Today's rule releases an owner or operator from closure, post-closure care, or corrective action financial responsibility when he or she has notified the State Director that he has placed in the facility operating record a certification signed by an independent registered professional engineer (or approved by the Director of an approved State) that the specific activities (i.e., closure, 30 years of post-closure care, corrective action) have been completed in accordance with the appropriate plan. In addition, to be released from financial responsibility closure, an owner or operator must file the required notation to the deed that the land has been used as an MSWLF unit.

The financial responsibility requirements are effective 30 months after the publication of today's rule to allow time for rule development and implementation.

VII. Implementation of Today's Rule

States and owners and operators will need to undertake a number of steps to implement today's rule. As discussed below, many of these steps, such as State program upgrades and owner or operator compliance planning, need to be initiated well before the effective date of the rule.

A. State Activities

As indicated earlier, States will play a key role in implementing today's rule. RCRA requires States to adopt and implement, within 18 months of the promulgation of this rule, a permit program or other system of prior approval to ensure that MSWLFs are in compliance with the revised Criteria. EPA is required to determine whether States have developed adequate programs.

To implement the above statutory mandate, States need to move quickly to review their existing permitting program to determine where their program must be upgraded and to complete the necessary program changes, if any are needed. States should work closely with the appropriate EPA Regional Office during this process and in developing the appropriate program information for EPA review and approval. The process and criteria EPA will use in evaluating the adequacy of State programs will be set forth in a separate rule, the "State Implementation Rule," to be issued shortly. The Agency recognizes the traditional role of States in implementing landfill standards and fully intends that the States will maintain the lead role in implementing today's program. Therefore, EPA's goal is for all States to apply for and receive approval of their programs.

Once a State is approved by EPA, the State will implement its revised subtitle D program (or continue with their current program if no changes were needed). As part of this effort, States will need to review and modify existing permits as necessary and incorporate the revised Criteria into new permits. Approved States may establish alternative compliance schedules for ground-water monitoring at existing landfills and approve alternative methods of compliance for selected requirements. Finally, approved States will need to conduct inspection and enforcement activities.

B. Owner or Operator Activities

Owners or operators are responsible for compliance with today's rule by the effective date regardless of the status of the State's program. In fact, today's rule is structured to facilitate self-implementation by the owner or operator. However, if the facility is located in an approved State, the owner or operator has the opportunity for increased flexibility in complying with today's rule. As mentioned above, approved States may approve, under certain conditions, alternative compliance schedules and methods or procedures. The owner or operator should contact the State to determine the status of the State program.

Owners and operators should begin planning immediately for compliance with today's rule. A key first step is determining which requirements, if any, will apply. Figure 1 in Section VI of today's preamble provides a decision-making process to assist in this process. Figure 1 indicates, for example, that if your MSWLF will not receive waste after the effective date, only the final cover requirements of § 258.60(a)(2) will apply. If the community plans to phase out its existing MSWLF, it will need to identify an alternative waste

management arrangement for the community.

If the MSWLF will receive waste after the effective date of today's rule, all or some of the Part 258 requirements will apply. The specific requirements applicable to your MSWLF unit depend on whether your MSWLF unit is an existing unit, lateral expansion, or a new MSWLF unit. All requirements apply to new units and lateral expansions; all requirements, except certain location restrictions and the design criteria, apply to existing MSWLF units. Section VI of this preamble summarizes the major requirements in today's rule and their applicability to various types of MSWLF units.

Once an owner or operator has determined which requirements will apply to her/his MSWLF unit, the owner or operator should begin to take steps to ensure compliance by the effective date of the requirement. Figure 6 provides an overview of today's requirements and when they will become effective. All requirements are effective in 24 months, except ground-water monitoring (for existing units and lateral expansions) and financial responsibility. Ground-water monitoring is phased in over a five-year period for existing MSWLF units and lateral expansions, and owners and operators must comply with financial assurance in 30 months.

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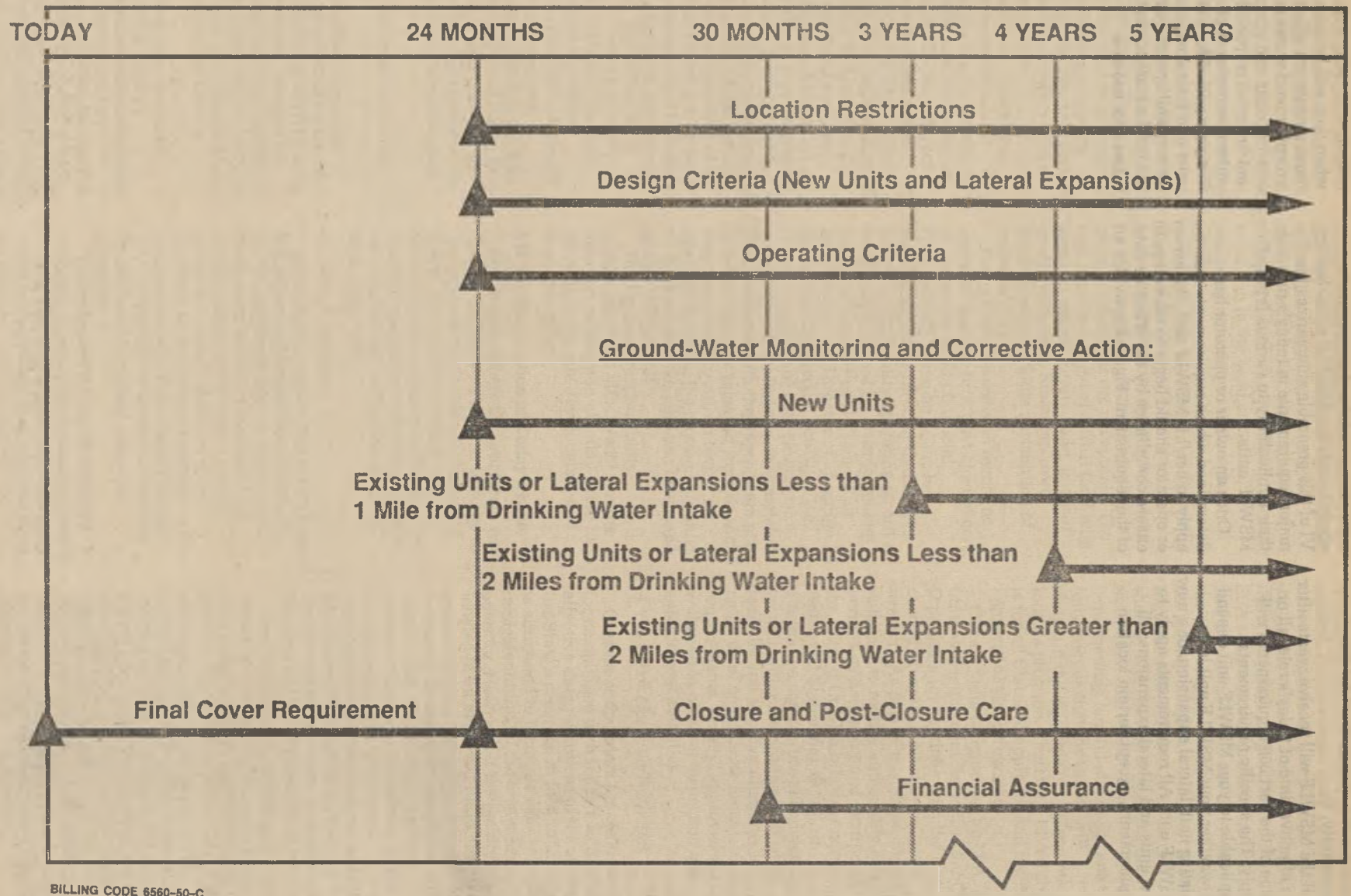
Figure 6

EFFECTIVE DATE OF PART 258 REQUIREMENTS



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Owners or operators should examine each of the applicable requirements to identify steps necessary to ensure compliance. First, the owner or operator should evaluate the characteristics of the landfill site to determine if it complies with the location restrictions in today's rule. Certain restrictions apply for areas near airports, floodplains, unstable areas, wetlands, seismic impact zones, and fault areas. Some operational or design modifications may be needed at existing MSWLFs or for new MSWLFs that are planned.

Today's final design requirements do not apply to existing units. However, owners or operators of new MSWLF units or lateral expansions should review their design plans to ensure that they will meet the specifications of the final rule (i.e., a design that meets the performance criteria in subpart D of today's rule and is approved by the Director of an approved State or a composite liner design).

Owners or operators of MSWLFs should review the current operating procedures (or planned procedures if a new unit or a lateral expansion) of the landfill to determine if all required operational procedures are currently being carried out at the facility. For example, the owner or operator will need to have a routine methane monitoring program in place, control disposal of liquids, and establish a program for detecting and preventing disposal of regulated hazardous waste and PCB wastes. All of today's operating requirements are summarized in Section VI above.

As part of examining and upgrading the operation of the landfill, the owner or operator will need to begin steps to establish a ground-water monitoring program at the facility or upgrade the existing monitoring program. These steps include characterizing the hydrogeology of the site, installing wells, and establishing a sampling and analysis program. As indicated in Figure 6, the date monitoring must be in place depends on the location of the landfill with respect to drinking water intakes. Approved States may set an alternative schedule so owners and operators should contact their States for information on the status of the State program.

Owners and operators will also need to develop and have in place within 24 months closure and post-closure care plans for the landfill. These plans must describe the various activities and procedures the owner or operator will follow in closing and carrying out post-closure care at the landfill.

Finally, the owner or operator should begin early planning for implementation of the financial assurance requirements in today's rule. During the next 30 months, EPA plans to propose and finalize a special test for local governments. Therefore, owners and operators, particularly local governments, should track this effort and provide input to the Agency on the proposal.

VIII. EPA Training on Final Rule

As part of the implementation program for this rule, EPA is planning to conduct technical training for owners and operators, local government, and States. This training, which will be held at several locations throughout the country, will provide guidance on interpreting the technical provisions of today's rule. This training will be based on a comprehensive technical guidance document the Agency is currently developing for this rule. EPA expects that the guidance and the training programs will be available within the next six months. Specific information regarding the dates and locations of these programs will be announced in the **Federal Register** in the near future.

IX. Paperwork Reduction Act

The information collection requirements in this rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register.**

The total annual public reporting burden for this collection of information is estimated to be 204,400 hours with an average of 50 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223Y, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

X. References

A. Comment Response Documents

The following comment response documents have been prepared and placed in docket number F-91-CMLF-FFFFF.

- U.S. EPA, OSW. Comment Response Document on the Proposed Solid Waste Disposal Facility Criteria—Notification Requirements (40 CFR part 257) August 1991.
- U.S. EPA, OSW. Comment Response Document on the Proposed Solid Waste Disposal Facility Criteria—General Provisions (40 CFR part 258—subpart A) August 1991.
- U.S. EPA, OSW. Comment Response Document on the Proposed Solid Waste Disposal Facility Criteria—Location Restrictions (40 CFR part 258—subpart B) August 1991.
- U.S. EPA, OSW. Comment Response Document on the Proposed Solid Waste Disposal Facility Criteria—Operating Criteria (40 CFR part 258—subpart C) August 1991.
- U.S. EPA, OSW. Comment Response Document on the Proposed Solid Waste Disposal Facility Criteria—Design Criteria (40 CFR part 258—subpart D) August 1991.
- U.S. EPA, OSW. Comment Response Document on the Proposed Solid Waste Disposal Facility Criteria—Ground-water Monitoring and Corrective Action (40 CFR part 258—subpart E) August 1991.
- U.S. EPA, OSW. Comment Response Document on the Proposed Solid Waste Disposal Facility Criteria—Closure and Post-Closure Care (40 CFR part 258—subpart F) August 1991.
- U.S. EPA, OSW. Comment Response Document on the Proposed Solid Waste Disposal Facility Criteria—Financial Assurance (40 CFR part 258—subpart G) August 1991.

B. Regulatory Impact Analysis

- U.S. EPA, OSW, Regulatory Impact Analysis (RIA) for the Final Criteria for Municipal Solid Waste Landfills—(40 CFR part 258)—Subtitle D of RCRA —December 1990.
- U.S. EPA, OSW, Addendum to RIA for the Final Criteria for Municipal Solid Waste Landfills—(40 CFR part 258)—Subtitle D of RCRA—August 1991.
- U.S. EPA, OSW, Comment Response Document on the Proposed Solid Waste Disposal Facility Criteria—RIA—August 1991.

C. Other References

(1) U.S. EPA, OSWER, Report to Congress, Solid Waste Disposal in the United States. EPA/530-SW-88-011B. October 1988.

(2) U.S. EPA, OSW, Survey of Solid Waste (Municipal) Landfill Facilities. August 1988.

(3) U.S. EPA, OSWER, The Solid Waste Dilemma: An Agenda for Action. EPA/530-SW-89-019. February 1989.

(4) U.S. EPA, OSWER, Decision-Makers Guide to Solid Waste Management. EPA/530-SW-89-072. November 1989.

(5) World Wildlife Fund & The Conservation Foundation, Getting at the Source: Strategies for Reducing Municipal Solid Waste. 1991.

(6) U.S. EPA, OSW, Characterization of Products Containing Lead and Cadmium in Municipal Solid Waste in the United States, 1970 to 2000. EPA/530-SW-89-015. January 1989.

(7) U.S. EPA, OSWER, Report to Congress, Methods to Manage and Control Plastic Wastes. EPA/530–SW–89–051. February 1990.
(8) U.S. EPA, OSW, Summary of Data on Municipal Solid Waste Landfill Leachate Characteristics—Criteria for Municipal Solid Waste Landfills (40 CFR part 258)—Subtitle D of the Resource Conservation and Recovery Act (RCRA). July 1988. (draft). EPA/530–SW–88–038, PB88–242 441.
(9) U.S. EPA, OSWER, Characterization of Municipal Solid Waste in the United States: 1990 Update. EPA/530–SW–90–042. June 1990.
(10) U.S. GAO, Nonhazardous Waste: Environmental Safeguards for Industrial Facilities Need to be Developed. GAO/RCED–90–92. April 1990.

XI. List of Subjects

40 CFR Part 257

Reporting and recordkeeping requirements, Waste disposal.

40 CFR Part 258

Corrective action, Household hazardous waste, Liner requirements, Liquids in landfills, Reporting and recordkeeping requirements, Security measures, Small quantity generators, Waste disposal, Water pollution control.

Dated: September 11, 1991.

William K. Reilly,

Administrator.

For reasons set out in the preamble, title 40 of the Code of Federal Regulations is amended as set forth below:

PART 257—CRITERIA FOR CLASSIFICATION OF SOLID WASTE DISPOSAL FACILITIES AND PRACTICES

1. The authority citation for part 257 is revised to read as follows:

Authority: 42 U.S.C. 6907(a)(3), 6944(a) and 6949a(c), 33 U.S.C. 1345 (d) and (e).

2. Section 257.1 is amended by adding paragraph (c)(10) to read as follows:

§ 257.1 Scope and purpose.

* * * * *

(c) * * *

(10) The criteria of this part do not apply to municipal solid waste landfill units, which are subject to the revised criteria contained in part 258 of this chapter.

3. Section 257.2 is amended by revising the definition for "facility" and adding definitions in alphabetical order for "land application unit," "landfill," "municipal solid waste landfill unit," "surface impoundment," and "waste pile" to read as follows:

§ 257.2 Definitions.

* * * * *

Facility means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

Land application unit means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for agricultural purposes or for treatment and disposal.

Landfill means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile.

* * * * *

Municipal solid waste landfill (MSWLF) unit means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined in this section. A MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, and industrial solid waste. Such a landfill may be publicly or privately owned. An MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion.

* * * * *

Surface impoundment or *impoundment* means a facility or part of a facility that is a natural topographic depression, human-made excavation, or diked area formed primarily of earthern materials (although it may be lined with human-made materials), that is designed to hold an accumulation of liquid wastes or wastes containing free liquids and that is not an injection well. Examples of surface impoundments are holding storage, settling, and aeration pits, ponds, and lagoons.

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Waste pile or *pile* means any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage.

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4. In 40 CFR part 257, Appendix I is revised to read as follows:

Appendix I to 40 CFR Part 257—Maximum Contaminant Levels (MCLs)

MAXIMUM CONTAMINANT LEVELS (MCLs) PROMULGATED UNDER THE SAFE DRINKING WATER ACT

Chemical	CAS No.	MCL (mg/l)
Arsenic	7440–38–2	0.05
Barium	7440–39–3	1.0
Benzene	71–343–2	0.005
Cadmium	7440–43–9	0.01
Carbon tetrachloride	56–23–5	0.005
Chromium (hexavalent)	7440–47–3	0.05
2,4-Dichlorophenoxy acetic acid	94–75–7	0.1
1,4-Dichlorobenzene	106–46–7	0.075
1,2-Dichloroethane	107–06–2	0.005
1,1-Dichloroethylene	75–35–4	0.007
Endrin	75–20–8	0.0002
Fluoride	7	4.0
Lindane	58–89–9	0.004
Lead	7439–92–1	0.05
Mercury	7439–97–6	0.002
Methoxychlor	72–43–5	0.1
Nitrate		10.0
Selenium	7782–49–2	0.01
Silver	7440–22–4	0.05
Toxaphene	8001–35–2	0.005
1,1,1-Trichloroethane	71–55–6	0.2
Trichloroethylene	79–01–6	0.005
2,4,5-Trichlorophenoxy acetic acid	93–76–5	0.01
Vinyl chloride	75–01–4	0.002

5. A new part 258 is added to read as follows:

PART 258—CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS

Subpart A—General

Sec.
258.1 Purpose, scope, and applicability.
258.2 Definitions.
258.3 Consideration of other Federal laws.
258.4–258.9 [Reserved].

Subpart B—Location Restrictions

Sec.
258.10 Airport safety.
258.11 Floodplains.
258.12 Wetlands.
258.13 Fault areas.
258.14 Seismic impact zones.
258.15 Unstable areas.
258.16 Closure of existing municipal solid waste landfill units.
258.17–258.19 [Reserved].

Subpart C—Operating Criteria

Sec.
258.20 Procedures for excluding the receipt of hazardous waste.
258.21 Cover material requirements.
258.22 Disease vector control.
258.23 Explosive gases control.
258.24 Air criteria.
258.25 Access requirements.
258.26 Run-on/run-off control systems.
258.27 Surface water requirements.
258.28 Liquids restrictions.
258.29 Recordkeeping requirements.
258.30–258.39 [Reserved].

Subpart D—Design Criteria

Sec.
258.40 Design criteria.
258.41–258.49 [Reserved].

Subpart E—Ground-Water Monitoring and Corrective Action

Subpart F—Closure and Post-closure Care

Subpart G—Financial Assurance Criteria

Authority: 42 U.S.C. 6907(a)(3), 6944(a) and 6949(c); 33 U.S.C. 1345 (d) and (e).

Subpart A—General

§ 258.1 Purpose, scope, and applicability.

(a) The purpose of this part is to establish minimum national criteria under the Resource Conservation and Recovery Act (RCRA or the Act), as amended, for all municipal solid waste landfill (MSWLF) units and under the Clean Water Act, as amended, for municipal solid waste landfills that are used to dispose of sewage sludge. These minimum national criteria ensure the protection of human health and the environment.

(b) These Criteria apply to owners and operators of new MSWLF units, existing MSWLF units, and lateral expansions, except as otherwise specifically provided in this part; all other solid waste disposal facilities and practices that are not regulated under Subtitle C of RCRA are subject to the criteria contained in part 257 of this chapter.

(c) These Criteria do not apply to municipal solid waste landfill units that do not receive waste after October 9, 1991.

(d) MSWLF units that receive waste after October 9, 1991 but stop receiving waste before October 9, 1993 are exempt from all the requirements of this part 258, except the final cover requirement specified in § 258.60(a). The final cover must be installed within six months of last receipt of wastes. Owners or operators of MSWLF units described in this paragraph that fail to complete cover installation within this six month period will be subject to all the requirements of this part 258, unless otherwise specified.

(e) All MSWLF units that receive waste on or after October 9, 1993 must comply with all requirements of this part 258 unless otherwise specified.

(f)(1) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions that dispose of less than twenty (20) tons of municipal solid waste daily, based on an annual average are exempt from subparts D and E of this part, so long as there is no evidence of existing ground-water contamination from the MSWLF unit, and the MSWLF unit serves:

(i) A community that experiences an annual interruption of at least three consecutive months of surface transportation that prevents access to a regional waste management facility, or

(ii) A community that has no practicable waste management alternative and the landfill unit is located in an area that annually receives less than or equal to 25 inches of precipitation.

(2) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions that meet the criteria in paragraph (f)(1)(i) or (f)(1)(ii) of this section must place in the operating record information demonstrating this.

(3) If the owner or operator of a new MSWLF unit, existing MSWLF unit, or lateral expansion has knowledge of ground-water contamination resulting from the unit that has asserted the exemption in paragraph (f)(1)(i) or (f)(1)(ii) of this section, the owner or operator must notify the State Director of such contamination and, thereafter, comply with subparts D and E of this part.

(g) Municipal solid waste landfill units failing to satisfy these criteria are considered open dumps for purposes of State solid waste management planning under RCRA.

(h) Municipal solid waste landfill units failing to satisfy these criteria constitute open dumps, which are prohibited under section 4005 of RCRA.

(i) Municipal solid waste landfill units containing sewage sludge and failing to satisfy these Criteria violate sections 309 and 405(e) of the Clean Water Act.

(j) The effective date of this part is October 9, 1993, except subpart G of this part 258 is effective April 9, 1994.

§ 258.2 Definitions.

Unless otherwise noted, all terms contained in this part are defined by their plain meaning. This section contains definitions for terms that appear throughout this part; additional definitions appear in the specific sections to which they apply.

Active life means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with § 258.60 of this part.

Active portion means that part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with § 258.60 of this part.

Aquifer means a geological formation, group of formations, or porton of a formation capable of yielding significant quantities of ground water to wells or springs.

Commercial solid waste means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

Director of an approved State means the chief administrative officer of a State agency responsible for implementing the State municipal solid waste permit program or other system of prior approval that is deemed to be adequate by EPA under regulations published pursuant to sections 2002 and 4005 of RCRA.

Existing MSWLF unit means any municipal solid waste landfill unit that is receiving solid waste as of the effective date of this part (October 9, 1993). Waste placement in existing units must be consistent with past operating practices or modified practices to ensure good management.

Facility means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste.

Ground water means water below the land surface in a zone of saturation.

Household waste means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

Industrial solid waste means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under subtitle C of RCRA. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: Electric power

generation; fertilizer/agricultural chemicals; food and related products/by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing/foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

Lateral expansion means a horizontal expansion of the waste boundaries of an existing MSWLF unit.

Leachate means a liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

Municipal solid waste landfill unit means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under § 257.2. A MSWLF unit also may receive other types of RCRA subtitle D wastes, such as commercial solid waste, nonhazardous sludge, small quantity generator waste and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion.

New MSWLF unit means any municipal solid waste landfill unit that has not received waste prior to the effective date of this part (October 9, 1993).

Open burning means the combustion of solid waste without:

(1) Control of combustion air to maintain adequate temperature for efficient combustion,

(2) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion, and

(3) Control of the emission of the combustion products.

Operator means the person(s) responsible for the overall operation of a facility or part of a facility.

Owner means the person(s) who owns a facility or part of a facility.

Run-off means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

Run-on means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

Saturated zone means that part of the earth's crust in which all voids are filled with water.

Sludge means any solid, semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility exclusive of the treated effluent from a wastewater treatment plant.

Solid waste means any garbage, or refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations, and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. 1342, or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923).

State means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.

State Director means the chief administrative officer of the State agency responsible for implementing the State municipal solid waste permit program or other system of prior approval.

Uppermost aquifer means the geologic formation nearest the natural ground surface that is an aquifer, as well as, lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

Waste management unit boundary means a vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

§ 258.3 Consideration of other Federal laws.

The owner or operator of a municipal solid waste landfill unit must comply with any other applicable Federal rules, laws, regulations, or other requirements.

§§ 258.4–258.9 [Reserved]

Subpart B—Location Restrictions

§ 258.10 Airport safety.

(a) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions that are located within 10,000 feet (3,048 meters) of any airport runway end used by turbojet aircraft or within 5,000 feet (1,524 meters) of any airport runway end used by only piston-type aircraft must demonstrate that the units are designed and operated so that the MSWLF unit does not pose a bird hazard to aircraft.

(b) Owners or operators proposing to site new MSWLF units and lateral expansions within a five-mile radius of any airport runway end used by turbojet or piston-type aircraft must notify the affected airport and the Federal Aviation Administration (FAA).

(c) The owner or operator must place the demonstration in paragraph (a) of this section in the operating record and notify the State Director that it has been placed in the operating record.

(d) For purposes of this section:

(1) *Airport* means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

(2) *Bird hazard* means an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants.

§ 258.11 Floodplains.

(a) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions located in 100-year floodplains must demonstrate that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment. The owner or operator must place the demonstration in the operating record and notify the State Director that it has been placed in the operating record.

(b) For purposes of this section:

(1) *Floodplain* means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands, that are inundated by the 100-year flood.

(2) *100-year flood* means a flood that has a 1-percent or greater chance of recurring in any given year or a flood of a magnitude equalled or exceeded once in 100 years on the average over a significantly long period.

(3) *Washout* means the carrying away of solid waste by waters of the base flood.

§ 258.12 Wetlands.

(a) New MSWLF units and lateral expansions shall not be located in wetlands, unless the owner or operator can make the following demonstrations to the Director of an approved State:

(1) Where applicable under section 404 of the Clean Water Act or applicable State wetlands laws, the presumption that practicable alternative to the

proposed landfill is available which does not involve wetlands is clearly rebutted;

(2) The construction and operation of the MSWLF unit will not:

(i) Cause or contribute to violations of any applicable State water quality standard,

(ii) Violate any applicable toxic effluent standard or prohibition under Section 307 of the Clean Water Act,

(iii) Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat, protected under the Endangered Species Act of 1973, and

(iv) Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary;

(3) The MSWLF unit will not cause or contribute to significant degradation of wetlands. The owner or operator must demonstrate the integrity of the MSWLF unit and its ability to protect ecological resources by addressing the following factors:

(i) Erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the MSWLF unit;

(ii) Erosion, stability, and migration potential of dredged and fill materials used to support the MSWLF unit;

(iii) The volume and chemical nature of the waste managed in the MSWLF unit;

(iv) Impacts on fish, wildlife, and other aquatic resources and their habitat from release of the solid waste;

(v) The potential effects of catastrophic release of waste to the wetland and the resulting impacts on the environment; and

(vi) Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected.

(4) To the extent required under section 404 of the Clean Water Act or applicable State wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent practicable as required by paragraph (a)(1) of this section, then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands); and

(5) Sufficient information is available to make a reasonable determination with respect to these demonstrations.

(b) For purposes of this section, *wetlands* means those areas that are defined in 40 CFR 232.2(r).

§ 258.13 Fault areas.

(a) New MSWLF units and lateral expansions shall not be located within 200 feet (60 meters) of a fault that has had displacement in Holocene time unless the owner or operator demonstrates to the Director of an approved State that an alternative setback distance of less than 200 feet (60 meters) will prevent damage to the structural integrity of the MSWLF unit and will be protective of human health and the environment.

(b) For the purposes of this section:

(1) *Fault* means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

(2) *Displacement* means the relative movement of any two sides of a fault measured in any direction.

(3) *Holocene* means the most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present.

§ 258.14 Seismic impact zones.

(a) New MSWLF units and lateral expansions shall not be located in seismic impact zones, unless the owner or operator demonstrates to the Director of an approved State/Tribe that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site. The owner or operator must place the demonstration in the operating record and notify the State Director that it has been placed in the operating record.

(b) For the purposes of this section:

(1) *Seismic impact zone* means an area with a ten percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull paragraph (g) of this section, will exceed 0.10g in 250 years.

(2) *Maximum horizontal acceleration in lithified earth material* means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90 percent or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

(3) *Lithified earth material* means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. This term does not include man-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth surface.

§ 258.15 Unstable areas.

(a) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions located in an unstable area must demonstrate that engineering measures have been incorporated into the MSWLF unit's design to ensure that the integrity of the structural components of the MSWLF unit will not be disrupted. The owner or operator must place the demonstration in the operating record and notify the State Director that it has been placed in the operating record. The owner or operator must consider the following factors, at a minimum, when determining whether an area is unstable:

(1) On-site or local soil conditions that may result in significant differential settling;

(2) On-site or local geologic or geomorphologic features; and

(3) On-site or local human-made features or events (both surface and subsurface).

(b) For purposes of this section:

(1) *Unstable area* means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas can include poor foundation conditions, areas susceptible to mass movements, and Karst terranes.

(2) *Structural components* means liners, leachate collection systems, final covers, run-on/run-off systems, and any other component used in the construction and operation of the MSWLF that is necessary for protection of human health and the environment.

(3) *Poor foundation conditions* means those areas where features exist which indicate that a natural or man-induced event may result in inadequate foundation support for the structural components of an MSWLF unit.

(4) *Areas susceptible to mass movement* means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the MSWLF unit, because of natural or man-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas

of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock fall.

(5) *Karst terranes* means areas where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

§ 258.16 Closure of existing municipal solid waste landfill units.

(a) Existing MSWLF units that cannot make the demonstration specified in § 258.10(a), pertaining to airports, § 258.11(a), pertaining to floodplains, or § 258.15(a), pertaining to unstable areas, must close by October 9, 1996, in accordance with § 258.60 of this part and conduct post-closure activities in accordance with § 258.61 of this part.

(b) The deadline for closure required by paragraph (a) of this section may be extended up to two years if the owner or operator demonstrates to the Director of an approved State that:

(1) There is no available alternative disposal capacity;

(2) There is no immediate threat to human health and the environment.

Note to Subpart B: Owners or operators of MSWLFs should be aware that a State in which their landfill is located or is to be located, may have adopted a state wellhead protection program in accordance with section 1428 of the Safe Drinking Water Act. Such state wellhead protection programs may impose additional requirements on owners or operators of MSWLFs than those set forth in this part.

§ 258.17–258.19 [Reserved].

Subpart C—Operating Criteria

§ 258.20 Procedures for excluding the receipt of hazardous waste.

(a) Owners or operators of all MSWLF units must implement a program at the facility for detecting and preventing the disposal of regulated hazardous wastes as defined in part 261 of this chapter and polychlorinated biphenyls (PCB) wastes as defined in part 761 of this chapter. This program must include, at a minimum:

(1) Random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain regulated hazardous wastes or PCB wastes;

(2) Records of any inspections;

(3) Training of facility personnel to recognize regulated hazardous waste and PCB wastes; and

(4) Notification of State Director of authorized States under Subtitle C of RCRA or the EPA Regional Administrator if in an unauthorized State if a regulated hazardous waste or PCB waste is discovered at the facility.

(b) For purposes of this section, *regulated hazardous waste* means a solid waste that is a hazardous waste, as defined in 40 CFR 261.3, that is not excluded from regulation as a hazardous waste under 40 CFR 261.4(b) or was not generated by a conditionally exempt small quantity generator as defined in § 261.5 of this chapter.

§ 258.21 Cover material requirements.

(a) Except as provided in paragraph (b) of this section, the owners or operators of all MSWLF units must cover disposed solid waste with six inches of earthen material at the end of each operating day, or at more frequent intervals if necessary, to control disease vectors, fires, odors, blowing litter, and scavenging.

(b) Alternative materials of an alternative thickness (other than at least six inches of earthen material) may be approved by the Director of an approved State if the owner or operator demonstrates that the alternative material and thickness control disease vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment.

(c) The Director of an approved State may grant a temporary waiver from the requirement of paragraph (a) and (b) of this section if the owner or operator demonstrates that there are extreme seasonal climatic conditions that make meeting such requirements impractical.

§ 258.22 Disease vector control.

(a) Owners or operators of all MSWLF units must prevent or control on-site populations of disease vectors using techniques appropriate for the protection of human health and the environment.

(b) For purposes of this section, *disease vectors* means any rodents, flies, mosquitoes, or other animals, including insects, capable of transmitting disease to humans.

§ 258.23 Explosive gases control.

(a) Owners or operators of all MSWLF units must ensure that:

(1) The concentration of methane gas generated by the facility does not exceed 25 percent of the lower explosive limit for methane in facility structures (excluding gas control or recovery system components); and

(2) The concentration of methane gas does not exceed the lower explosive limit for methane at the facility property boundary.

(b) Owners or operators of all MSWLF units must implement a routine methane monitoring program to ensure that the standards of paragraph (a) of this section are met.

(1) The type and frequency of monitoring must be determined based on the following factors:

(i) Soil conditions;

(ii) The hydrogeologic conditions surrounding the facility;

(iii) The hydraulic conditions surrounding the facility; and

(iv) The location of facility structures and property boundaries.

(2) The minimum frequency of monitoring shall be quarterly.

(c) If methane gas levels exceeding the limits specified in paragraph (a) of this section are detected, the owner or operator must:

(1) Immediately take all necessary steps to ensure protection of human health and notify the State Director;

(2) Within seven days of detection, place in the operating record the methane gas levels detected and a description of the steps taken to protect human health; and

(3) Within 60 days of detection, implement a remediation plan for the methane gas releases, place a copy of the plan in the operating record, and notify the State Director that the plan has been implemented. The plan shall describe the nature and extent of the problem and the proposed remedy.

(4) The Director of an approved State may establish alternative schedules for demonstrating compliance with paragraphs (c) (2) and (3) of this section.

(d) For purposes of this section, *lower explosive limit* means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25°C and atmospheric pressure.

§ 258.24 Air criteria.

(a) Owners or operators of all MSWLFs must ensure that the units not violate any applicable requirements developed under a State Implementation Plan (SIP) approved or promulgated by the Administrator pursuant to section 110 of the Clean Air Act, as amended.

(b) Open burning of solid waste, except for the infrequent burning of agricultural wastes, silvicultural wastes, landclearing debris, diseased trees, or debris from emergency cleanup operations, is prohibited at all MSWLF units.

§ 258.25 Access requirements.

Owners or operators of all MSWLF units must control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes by using artificial barriers, natural barriers, or both, as appropriate to protect human health and the environment.

§ 258.25 Run-on/run-off control systems.

(a) Owners or operators of all MSWLF units must design, construct, and maintain:

(1) A run-on control system to prevent flow onto the active portion of the landfill during the peak discharge from a 25-year storm;

(2) A run-off control system from the active portion of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

(b) Run-off from the active portion of the landfill unit must be handled in accordance with § 258.27(a) of this part.

§ 258.27 Surface water requirements.

MSWLF units shall not:

(a) Cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act, including, but not limited to, the National Pollutant Discharge Elimination System (NPDES) requirements, pursuant to section 402.

(b) Cause the discharge of a nonpoint source of pollution to waters of the United States, including wetlands, that violates any requirement of an area-wide or State-wide water quality management plan that has been approved under section 208 or 319 of the Clean Water Act, as amended.

§ 258.28 Liquids restrictions.

(a) Bulk or noncontainerized liquid waste may not be placed in MSWLF units unless:

(1) The waste is household waste other than septic waste; or

(2) The waste is leachate or gas condensate derived from the MSWLF unit and the MSWLF unit, whether it is a new or existing MSWLF, or lateral expansion, is designed with a composite liner and leachate collection system as described in § 258.40(a)(2) of this part. The owner or operator must place the demonstration in the operating record and notify the State Director that it has been placed in the operating record.

(b) Containers holding liquid waste may not be placed in a MSWLF unit unless:

(1) The container is a small container similar in size to that normally found in household waste;

(2) The container is designed to hold liquids for use other than storage; or

(3) The waste is household waste.

(c) For purposes of this section:

(1) *Liquid waste* means any waste material that is determined to contain "free liquids" as defined by Method 9095 (Paint Filter Liquids Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Pub. No. SW-846).

(2) *Gas condensate* means the liquid generated as a result of gas recovery process(es) at the MSWLF unit.

§ 258.29 Recordkeeping requirements.

(a) The owner or operator of a MSWLF unit must record and retain near the facility in an operating record or in an alternative location approved by the Director of an approved State the following information as it becomes available:

(1) Any location restriction demonstration required under subpart B of this part;

(2) Inspection records, training procedures, and notification procedures required in § 258.20 of this part;

(3) Gas monitoring results from monitoring and any remediation plans required by § 258.23 of this part;

(4) Any MSWLF unit design documentation for placement of leachate or gas condensate in a MSWLF unit as required under § 258.28(a)(2) of this part;

(5) Any demonstration, certification, finding, monitoring, testing, or analytical data required by subpart E of this part;

(6) Closure and post-closure care plans and any monitoring, testing, or analytical data as required by §§ 258.60 and 258.61 of this part; and

(7) Any cost estimates and financial assurance documentation required by subpart G of this part.

(8) Any information demonstrating compliance with small community exemption as required by § 258.1(f)(2).

(b) The owner/operator must notify the State Director when the documents from paragraph (a) of this section have been placed or added to the operating record, and all information contained in the operating record must be furnished upon request to the State Director or be made available at all reasonable times for inspection by the State Director.

(c) The Director of an approved State can set alternative schedules for recordkeeping and notification requirements as specified in paragraphs (a) and (b) of this section, except for the notification requirements in § 258.10(b) and § 258.55(g)(1)(iii).

§ 258.30-258.39 [Reserved].

Subpart D—Design Criteria

§ 258.40 Design criteria.

(a) New MSWLF units and lateral expansions shall be constructed:

(1) In accordance with a design approved by the Director of an approved State or as specified in § 258.40(e) for unapproved States. The design must ensure that the concentration values listed in Table 1 of this section will not be exceeded in the uppermost aquifer at the relevant point of compliance, as specified by the Director of an approved State under paragraph (d) of this section, or

(2) With a composite liner, as defined in paragraph (b) of this section and a leachate collection system that is designed and constructed to maintain less than a 30-cm depth of leachate over the liner.

(b) For purposes of this section, *composite liner* means a system consisting of two components; the upper component must consist of a minimum 30-mil flexible membrane liner (FML), and the lower component must consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. FML components consisting of high density polyethylene (HDPE) shall be at least 60-mil thick. The FML component must be installed in direct and uniform contact with the compacted soil component.

(c) When approving a design that complies with paragraph (a)(1) of this section, the Director of an approved State shall consider at least the following factors:

(1) The hydrogeologic characteristics of the facility and surrounding land;

(2) The climatic factors of the area; and

(3) The volume and physical and chemical characteristics of the leachate.

(d) The relevant point of compliance specified by the Director of an approved State shall be no more than 150 meters from the waste management unit boundary and shall be located on land owned by the owner of the MSWLF unit. In determining the relevant point of compliance State Director shall consider at least the following factors:

(1) The hydrogeologic characteristics of the facility and surrounding land;

(2) The volume and physical and chemical characteristics of the leachate;

(3) The quantity, quality, and direction, of flow of ground water;

(4) The proximity and withdrawal rate of the ground-water users;

(5) The availability of alternative drinking water supplies;

(6) The existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water, and whether the ground water is currently used or reasonably expected to be used for drinking water;

(7) Public health, safety, and welfare effects; and

(8) Practicable capability of the owner or operator.

(e) If EPA does not promulgate a rule establishing the procedures and requirements for State compliance with RCRA section 4005(c)(1)(B) by October 9, 1993, owners and operators in unapproved States may utilize a design meeting the performance standard in § 258.40(a)(1) if the following conditions are met:

(1) The State determines the design meets the performance standard in § 258.40(a)(1);

(2) The State petitions EPA to review its determination; and

(3) EPA approves the State determination or does not disapprove the determination within 30 days.

Note to subpart D: 40 CFR part 239 is reserved to establish the procedures and requirements for State compliance with RCRA section 4005(c)(1)(B).

TABLE 1

Chemical	MCL (mg/l)
Arsenic	0.05
Barium	1.0
Benzene	0.005
Cadmium	0.01
Carbon tetrachloride	0.005
Chromium (hexavalent)	0.05
2,4-Dichlorophenoxy acetic acid	0.1
1,4-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
Endrin	0.0002
Fluoride	4
Lindane	0.004
Lead	0.05
Mercury	0.002
Methoxychlor	0.1
Nitrate	10
Selenium	0.01
Silver	0.05
Toxaphene	0.005
1,1,1-Trichloromethane	0.2
Trichloroethylene	0.005
2,4,5-Trichlorophenoxy acetic acid	0.01
Vinyl Chloride	0.002

Subpart E—Ground-Water Monitoring and Corrective Action

§ 258.50 Applicability.

(a) The requirements in this part apply to MSWLF units, except as provided in paragraph (b) of this section.

(b) Ground-water monitoring requirements under § 258.51 through § 258.55 of this part may be suspended by the Director of an approved State for a MSWLF unit if the owner or operator can demonstrate that there is no potential for migration of hazardous constituents from that MSWLF unit to the uppermost aquifer (as defined in § 258.2) during the active life of the unit and the post-closure care period. This demonstration must be certified by a qualified ground-water scientist and approved by the Director of an approved State, and must be based upon:

(1) Site-specific field collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport, and

(2) Contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and environment.

(c) Owners and operators of MSWLF units must comply with the ground-water monitoring requirements of this part according to the following schedule unless an alternative schedule is specified under paragraph (d) of this section:

(1) Existing MSWLF units and lateral expansions less than one mile from a drinking water intake (surface or subsurface) must be in compliance with the ground-water monitoring requirements specified in §§ 258.51–258.55 by October 9, 1996;

(2) Existing MSWLF units and lateral expansions greater than one mile but less than two miles from a drinking water intake (surface or subsurface) must be in compliance with the ground-water monitoring requirements specified in §§ 258.51–258.55 by October 9, 1995;

(3) Existing MSWLF units and lateral expansions greater than two miles from a drinking water intake (surface or subsurface) must be in compliance with the ground-water monitoring requirements specified in §§ 258.51–258.55 by October 9, 1996.

(4) New MSWLF units must be in compliance with the ground-water monitoring requirements specified in §§ 258.51–258.55 before waste can be placed in the unit.

(d) The Director of an approved State may specify an alternative schedule for the owners or operators of existing MSWLF units and lateral expansions to comply with the ground-water monitoring requirements specified in §§ 258.51–258.55. This schedule must ensure that 50 percent of all existing MSWLF units are in compliance by October 9, 1994 and all existing MSWLF units are in compliance by October 9, 1996. In setting the compliance schedule, the Director of an approved State must consider potential risks posed by the unit to human health and the environment. The following factors should be considered in determining potential risk:

(1) Proximity of human and environmental receptors;

(2) Design of the MSWLF unit;

(3) Age of the MSWLF unit;

(4) The size of the MSWLF unit; and

(5) Types and quantities of wastes disposed including sewage sludge; and

(6) Resource value of the underlying aquifer, including:

(i) Current and future uses;

(ii) Proximity and withdrawal rate of users; and

(iii) Ground-water quality and quantity.

(e) Once established at a MSWLF unit, ground-water monitoring shall be conducted throughout the active life and post-closure care period of that MSWLF unit as specified in § 258.61.

(f) For the purposes of this subpart, a *qualified ground-water scientist* is a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in groundwater hydrology and related fields as may be demonstrated by State registration, professional Certifications, or completion of accredited university programs that enable that individual to make sound professional judgements regarding ground-water monitoring, contaminant fate and transport, and corrective-action.

(g) The Director of an approved State may establish alternative schedules for demonstrating compliance with § 258.51(d)(2), pertaining to notification of placement of certification in operating record; § 258.54(c)(1), pertaining to notification that statistically significant increase (SSI) notice is in operating record; § 258.54(c) (2) and (3), pertaining to an assessment monitoring program; § 258.55(b), pertaining to sampling and analyzing Appendix II constituents; § 258.55(d)(1), pertaining to placement of notice (Appendix II constituents detected) in record and notification of notice in record; § 258.55(d)(2), pertaining to sampling for appendix I and II to this part; § 258.55(g), pertaining to notification (and placement of notice in record) of SSI above ground-water protection standard; §§ 258.55(g)(1)(iv) and 258.56(a), pertaining to assessment of corrective measures; § 258.57(a), pertaining to selection of remedy and notification of placement in record; § 258.58(c)(4), pertaining to notification of placement in record (alternative

corrective action measures); and § 258.58(f), pertaining to notification of placement in record (certification of remedy completed).

§ 258.51 Ground-water monitoring systems.

(a) A ground-water monitoring system must be installed that consists of a sufficient number of wells, installed at appropriate locations and depths, to yield ground-water samples from the uppermost aquifer (as defined in § 258.2) that:

(1) Represent the quality of background ground water that has not been affected by leakage from a unit. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

(i) Hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; or

(ii) Sampling at other wells will provide an indication of background ground-water quality that is as representative or more representative than that provided by the upgradient wells; and

(2) Represent the quality of ground water passing the relevant point of compliance specified by Director of an approved State under § 258.40(d) or at the waste management unit boundary in unapproved States. The downgradient monitoring system must be installed at the relevant point of compliance specified by the Director of an approved State under § 258.40(d) or at the waste management unit boundary in unapproved States that ensures detection of ground-water contamination in the uppermost aquifer. When physical obstacles preclude installation of ground-water monitoring wells at the relevant point of compliance at existing units, the down-gradient monitoring system may be installed at the closest practicable distance hydraulically down-gradient from the relevant point of compliance specified by the Director of an approved State under § 258.40 that ensure detection of groundwater contamination in the uppermost aquifer.

(b) The Director of an approved State may approve a multiunit ground-water monitoring system instead of separate ground-water monitoring systems for each MSWLF unit when the facility has several units, provided the multi-unit ground-water monitoring system meets the requirement of § 258.51(a) and will be as protective of human health and the environment as individual monitoring systems for each MSWLF unit, based on the following factors:

(1) Number, spacing, and orientation of the MSWLF units;

(2) Hydrogeologic setting;

(3) Site history;

(4) Engineering design of the MSWLF units, and

(5) Type of waste accepted at the MSWLF units.

(c) Monitoring wells must be cased in a manner that maintains the integrity of the monitoring well bore hole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of ground-water samples. The annular space (i.e., the space between the bore hole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the ground water.

(1) The owner or operator must notify the State Director that the design, installation, development, and decommission of any monitoring wells, piezometers and other measurement, sampling, and analytical devices documentation has been placed in the operating record; and

(2) The monitoring wells, piezometers, and other measurement, sampling, and analytical devices must be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

(d) The number, spacing, and depths of monitoring systems shall be:

(1) Determined based upon site-specific technical information that must include thorough characterization of:

(i) Aquifer thickness, ground-water flow rate, ground-water flow direction including seasonal and temporal fluctuations in ground-water flow; and

(ii) Saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the uppermost aquifer; including, but not limited to: Thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities and effective porosities.

(2) Certified by a qualified ground-water scientist or approved by the Director of an approved State. Within 14 days of this certification, the owner or operator must notify the State Director that the certification has been placed in the operating record.

§ 258.52 [Reserved].

§ 258.53 Ground-water sampling and analysis requirements.

(a) The ground-water monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of ground-water quality at the background and downgradient wells installed in compliance with § 258.51(a) of this part. The owner or operator must notify the State Director that the sampling and analysis program documentation has been placed in the operating record and the program must include procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures;

(4) Chain of custody control; and

(5) Quality assurance and quality control.

(b) The ground-water monitoring program must include sampling and analytical methods that are appropriate for ground-water sampling and that accurately measure hazardous constituents and other monitoring parameters in ground-water samples. Ground-water samples shall not be field-filtered prior to laboratory analysis.

(c) The sampling procedures and frequency must be protective of human health and the environment.

(d) Ground-water elevations must be measured in each well immediately prior to purging, each time ground water is sampled. The owner or operator must determine the rate and direction of ground-water flow each time ground water is sampled. Ground-water elevations in wells which monitor the same waste management area must be measured within a period of time short enough to avoid temporal variations in ground-water flow which could preclude accurate determination of ground-water flow rate and direction.

(e) The owner or operator must establish background ground-water quality in a hydraulically upgradient or background well(s) for each of the monitoring parameters or constituents required in the particular ground-water monitoring program that applies to the MSWLF unit, as determined under § 258.54(a) or § 258.55(a) of this part. Background ground-water quality may be established at wells that are not located hydraulically upgradient from the MSWLF unit if it meets the requirements of § 258.51(a)(1).

(f) The number of samples collected to establish ground-water quality data must be consistent with the appropriate statistical procedures determined pursuant to paragraph (g) of this section. The sampling procedures shall be those specified under § 258.54(b) for detection monitoring, § 258.55 (b) and (d) for assessment monitoring, and § 258.56(b) of corrective action.

(g) The owner or operator must specify in the operating record one of the following statistical methods to be used in evaluating ground-water monitoring data for each hazardous constituent. The statistical test chosen shall be conducted separately for each hazardous constituent in each well.

(1) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(2) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(3) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

(4) A control chart approach that gives control limits for each constituent.

(5) Another statistical test method that meets the performance standards of § 258.53(h). The owner or operator must place a justification for this alternative in the operating record and notify the State Director of the use of this alternative test. The justification must demonstrate that the alternative method meets the performance standards of § 258.53(h).

(h) Any statistical method chosen under § 258.53(g) shall comply with the following performance standards, as appropriate:

(1) The statistical method used to evaluate ground-water monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data should be transformed or a distribution-free theory test should be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a ground-water protection standard, the test shall be done at a Type I error level no less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experiment wise error rate for each testing period shall be no less than 0.05; however, the Type I error of no less than 0.01 for individual well comparisons must be maintained. This performance standard does not apply to tolerance intervals, prediction intervals, or control charts.

(3) If a control chart approach is used to evaluate ground-water monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the environment. The parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(4) If a tolerance interval or a predictional interval is used to evaluate ground-water monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be protective of human health and the environment. These parameters shall be determined after considering the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern.

(5) The statistical method shall account for data below the limit of detection with one or more statistical procedures that are protective of human health and the environment. Any practical quantitation limit (pql) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(6) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

(i) The owner or operator must determine whether or not there is a statistically significant increase over background values for each parameter or constituent required in the particular ground-water monitoring program that applies to the MSWLF unit, as determined under §§ 258.54(a) or 258.55(a) of this part.

(1) In determining whether a statistically significant increase has occurred, the owner or operator must compare the ground-water quality of each parameter or constituent at each monitoring well designated pursuant to § 258.51(a)(2) to the background value of that constituent, according to the statistical procedures and performance standards specified under paragraphs (g) and (h) of this section.

(2) Within a reasonable period of time after completing sampling and analysis, the owner or operator must determine whether there has been a statistically significant increase over background at each monitoring well.

§ 258.54 Detection monitoring program.

(a) Detection monitoring is required at MSWLF units at all ground-water monitoring wells defined under §§ 258.51 (a)(1) and (a)(2) of this part. At a minimum, a detection monitoring program must include the monitoring for the constituents listed in appendix I to this part.

(1) The Director of an approved State may delete any of the appendix I monitoring parameters for a MSWLF unit if it can be shown that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit.

(2) The Director of an approved State may establish an alternative list of inorganic indicator parameters for a MSWLF unit, in lieu of some or all of the heavy metals (constituents 1–15 in appendix I to this part), if the alternative parameters provide a reliable indication of inorganic releases from the MSWLF unit to the ground water. In determining alternative parameters, the Director shall consider the following factors:

(i) The types, quantities, and concentrations of constituents in wastes managed at the MSWLF unit;

(ii) The mobility, stability, and persistence of waste constituents or their reaction products in the unsaturated zone beneath the MSWLF unit;

(iii) The detectability of indicator parameters, waste constituents, and reaction products in the ground water; and

(iv) The concentration or values and coefficients of variation of monitoring parameters or constituents in the groundwater background.

(b) The monitoring frequency for all constituents listed in appendix I to this part, or in the alternative list approved in accordance with paragraph (a)(2) of this section, shall be at least semiannual during the active life of the facility (including closure) and the post-closure period. A minimum of four independent samples from each well (background and downgradient) must be collected and analyzed for the appendix I constituents, or the alternative list approved in accordance with paragraph (a)(2) of this section, during the first

semiannual sampling event. At least one sample from each well (background and downgradient) must be collected and analyzed during subsequent semiannual sampling events. The Director of an approved State may specify an appropriate alternative frequency for repeated sampling and analysis for appendix I constituents, or the alternative list approved in accordance with paragraph (a)(2) of this section, during the active life (including closure) and the post-closure care period. The alternative frequency during the active life (including closure) shall be no less than annual. The alternative frequency shall be based on consideration of the following factors:

(1) Lithology of the aquifer and unsaturated zone;

(2) Hydraulic conductivity of the aquifer and unsaturated zone;

(3) Ground-water flow rates;

(4) Minimum distance between upgradient edge of the MSWLF unit and downgradient monitoring well screen (minimum distance of travel); and

(5) Resource value of the aquifer.

(c) If the owner or operator determines, pursuant to § 258.53(g) of this part, that there is a statistically significant increase over background for one or more of the constituents listed in appendix I to this part or in the alternative list approved in accordance with paragraph (a)(2) of this section, at any monitoring well at the boundary specified under § 258.51(a)(2), the owner or operator:

(1) Must, within 14 days of this finding, place a notice in the operating record indicating which constituents have shown statistically significant changes from background levels, and notify the State director that this notice was placed in the operating record; and

(2) Must establish an assessment monitoring program meeting the requirements of § 258.55 of this part within 90 days except as provided for in paragraph (c)(3) of this section.

(3) The owner/operator may demonstrate that a source other than a MSWLF unit caused the contamination or that the statistically significant increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground-water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist or approved by the Director of an approved State and be placed in the operating record. If a successful demonstration is made and documented, the owner or operator may continue detection monitoring as specified in this section. If, after 90 days, a successful demonstration is not made, the owner or operator must initiate an assessment monitoring program as required in § 258.55.

§ 258.55 Assessment monitoring program.

(a) Assessment monitoring is required whenever a statistically significant increase over background has been detected for one or more of the constituents listed in the appendix I to this part or in the alternative list approved in accordance with § 258.54(a)(2).

(b) Within 90 days of triggering an assessment monitoring program, and annually thereafter, the owner or operator must sample and analyze the ground water for all constituents identified in appendix II to this part. A minimum of one sample from each downgradient well must be collected and analyzed during each sampling event. For any constituent detected in the downgradient wells as a result of the complete appendix II analysis, a minimum of four independent samples from each well (background and downgradient) must be collected and analyzed to establish background for the constituents. The Director of an approved State may specify an appropriate subset of wells to be sampled and analyzed for appendix II constituents during assessment monitoring. The Director of an approved State may delete any of the appendix II monitoring parameters for a MSWLF unit if it can be shown that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit.

(c) The Director of an approved State may specify an appropriate alternate frequency for repeated sampling and analysis for the full set of appendix II constituents required by § 258.55(b) of this part, during the active life (including closure) and post-closure care of the unit considering the following factors:

(1) Lithology of the aquifer and unsaturated zone;

(2) Hydraulic conductivity of the aquifer and unsaturated zone;

(3) Ground-water flow rates;

(4) Minimum distance between upgradient edge of the MSWLF unit and downgradient monitoring well screen (minimum distance of travel);

(5) Resource value of the aquifer; and

(6) Nature (fate and transport) of any constituents detected in response to this section.

(d) After obtaining the results from the initial or subsequent sampling events required in paragraph (b) of this section, the owner or operator must:

(1) Within 14 days, place a notice in the operating record identifying the appendix II constituents that have been detected and notify the State Director that this notice has been placed in the operating record;

(2) Within 90 days, and on at least a semiannual basis thereafter, resample all wells specified by § 258.51(a), conduct analyses for all constituents in appendix I to this part or in the alternative list approved in accordance with § 258.54(a)(2), and for those constituents in appendix II to this part that are detected in response to paragraph (b) of this section, and record their concentrations in the facility operating record. At least one sample from each well (background and downgradient) must be collected and analyzed during these sampling events. The Director of an approved State may specify an alternative monitoring frequency during the active life (including closure) and the post-closure period for the constituents referred to in this paragraph. The alternative frequency for appendix I constituents, or the alternative list approved in accordance with § 258.54(a)(2), during the active life (including closure) shall be no less than annual. The alternative frequency shall be based on consideration of the factors specified in paragraph (c) of this section;

(3) Establish background concentrations for any constituents detected pursuant to paragraph (b) or (d)(2) of this section; and

(4) Establish ground-water protection standards for all constituents detected pursuant to paragraph (b) or (d) of this section. The ground-water protection standards shall be established in accordance with paragraphs (h) or (i) of this section.

(e) If the concentrations of all appendix II constituents are shown to be at or below background values, using the statistical procedures in § 258.53(g), for two consecutive sampling events, the owner or operator must notify the State Director of this finding and may return to detection monitoring.

(f) If the concentrations of any appendix II constituents are above background values, but all concentrations are below the ground-water protection standard established under paragraphs (h) or (i) of this section, using the statistical procedures in § 258.53(g), the owner or operator must continue assessment monitoring in accordance with this section.

(g) If one or more appendix II constituents are detected at statistically significant levels above the ground-water protection standard established under paragraphs (h) or (i) of this section in any sampling event, the owner or operator must, within 14 days

of this finding, place a notice in the operating record identifying the appendix II constituents that have exceeded the ground-water protection standard and notify the State Director and all appropriate local government officials that the notice has been placed in the operating record. The owner or operator also:

(1)(i) Must characterize the nature and extent of the release by installing additional monitoring wells as necessary;

(ii) Must install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with § 258.55(d)(2);

(iii) Must notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off-site if indicated by sampling of wells in accordance with § 258.55 (g)(1); and

(iv) Must initiate an assessment of corrective measures as required by § 255.56 of this part within 90 days; or

(2) May demonstrate that a source other than a MSWLF unit caused the contamination, or that the SSI increase resulted from error in sampling, analysis, statistical evaluation, or natural variation in ground-water quality. A report documenting this demonstration must be certified by a qualified ground-water scientist or approved by the Director of an approved State and placed in the operating record. If a successful demonstration is made the owner or operator must continue monitoring in accordance with the assessment monitoring program pursuant to § 258.55, and may return to detection monitoring if the appendix II constituents are at or below background as specified in § 258.55(e). Until a successful demonstration is made, the owner or operator must comply with § 258.55(g) including initiating an assessment of corrective measures.

(h) The owner or operator must establish a ground-water protection standard for each appendix II constituent detected in the ground-water. The ground-water protection standard shall be:

(1) For constituents for which a maximum contaminant level (MCL) has been promulgated under section 1412 of the Safe Drinking Water Act (codified) under 40 CFR part 141, the MCL for that constituent;

(2) For constituents for which MCLs have not been promulgated, the background concentration for the constituent established from wells in accordance with § 258.51(a)(1); or

(3) For constituents for which the background level is higher than the MCL identified under paragraph (h)(1) of this section or health based levels identified under § 258.55(i)(1), the background concentration.

(i) The Director of an approved State may establish an alternative ground-water protection standard for constituents for which MCLs have not been established. These ground-water protection standards shall be appropriate health based levels that satisfy the following criteria:

(1) The level is derived in a manner consistent with Agency guidelines for assessing the health risks of environmental pollutants (51 FR 33992, 34006, 34014, 34028, Sept. 24, 1986);

(2) The level is based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards (40 CFR part 792) or equivalent;

(3) For carcinogens, the level represents a concentration associated with an excess lifetime cancer risk level (due to continuous lifetime exposure) with the 1×10^{-4} to 1×10^{-6} range; and

(4) For systemic toxicants, the level represents a concentration to which the human population (including sensitive subgroups) could be exposed to on a daily basis that is likely to be without appreciable risk of deleterious effects during a lifetime. For purposes of this subpart, systemic toxicants include toxic chemicals that cause effects other than cancer or mutation.

(j) In establishing ground-water protection standards under paragraph (i) of this section, the Director of an approved State may consider the following:

(1) Multiple contaminants in the ground water;

(2) Exposure threats to sensitive environmental receptors; and

(3) Other site-specific exposure or potential exposure to ground water.

§ 258.56 Assessment of corrective measures.

(a) Within 90 days of finding that any of the constituents listed in appendix II to this part have been detected at a statistically significant level exceeding the ground-water protection standards defined under § 258.55 (h) or (i) of this part, the owner or operator must initiate an assessment of corrective measures. Such an assessment must be completed within a reasonable period of time.

(b) The owner or operator must continue to monitor in accordance with the assessment monitoring program as specified in § 258.55.

(c) The assessment shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under § 258.57, addressing at least the following:

(1) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(2) The time required to begin and complete the remedy;

(3) The costs of remedy implementation; and

(4) The institutional requirements such as State or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy(s).

(d) The owner or operator must discuss the results of the corrective measures assessment, prior to the selection of remedy, in a public meeting with interested and affected parties.

§ 258.57 Selection of remedy.

(a) Based on the results of the corrective measures assessment conducted under § 258.56, the owner or operator must select a remedy that, at a minimum, meets the standards listed in paragraph (b) of this section. The owner or operator must notify the State Director, within 14 days of selecting a remedy, a report describing the selected remedy has been placed in the operating record and how it meets the standards in paragraph (b) of this section.

(b) Remedies must:

(1) Be protective of human health and the environment;

(2) Attain the ground-water protection standard as specified pursuant to §§ 258.55 (h) or (i);

(3) Control the source(s) of releases so as to reduce or eliminate, to the maximum extent practicable, further releases of appendix II constituents into the environment that may pose a threat to human health or the environment; and

(4) Comply with standards for management of wastes as specified in § 258.58(d).

(c) In selecting a remedy that meets the standards of § 258.57(b), the owner or operator shall consider the following evaluation factors:

(1) The long- and short-term effectiveness and protectiveness of the potential remedy(s), along with the degree of certainty that the remedy will prove successful based on consideration of the following:

(i) Magnitude of reduction of existing risks;

(ii) Magnitude of residual risks in terms of likelihood of further releases

due to waste remaining following implementation of a remedy;

(iii) The type and degree of long-term management required, including monitoring, operation, and maintenance;

(iv) Short-term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, and redisposal of containment;

(v) Time until full protection is achieved;

(vi) Potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, redisposal, or containment;

(vii) Long-term reliability of the engineering and institutional controls; and

(viii) Potential need for replacement of the remedy.

(2) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:

(i) The extent to which containment practices will reduce further releases;

(ii) The extent to which treatment technologies may be used.

(3) The ease or difficulty of implementing a potential remedy(s) based on consideration of the following types of factors:

(i) Degree of difficulty associated with constructing the technology;

(ii) Expected operational reliability of the technologies;

(iii) Need to coordinate with and obtain necessary approvals and permits from other agencies;

(iv) Availability of necessary equipment and specialists; and

(v) Available capacity and location of needed treatment, storage, and disposal services.

(4) Practicable capability of the owner or operator, including a consideration of the technical and economic capability.

(5) The degree to which community concerns are addressed by a potential remedy(s).

(d) The owner or operator shall specify as part of the selected remedy a schedule(s) for initiating and completing remedial activities. Such a schedule must require the initiation of remedial activities within a reasonable period of time taking into consideration the factors set forth in paragraphs (d) (1)–(8) of this section. The owner or operator must consider the following factors in determining the schedule of remedial activities:

(1) Extent and nature of contamination;

(2) Practical capabilities of remedial technologies in achieving compliance with ground-water protection standards established under § 258.55 (g) or (h) and other objectives of the remedy;

(3) Availability of treatment or disposal capacity for wastes managed during implementation of the remedy;

(4) Desirability of utilizing technologies that are not currently available, but which may offer significant advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;

(5) Potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;

(6) Resource value of the aquifer including:

(i) Current and future uses;

(ii) Proximity and withdrawal rate of users;

(iii) Ground-water quantity and quality;

(iv) The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituent;

(v) The hydrogeologic characteristic of the facility and surrounding land;

(vi) Ground-water removal and treatment costs; and

(vii) The cost and availability of alternative water supplies.

(7) Practicable capability of the owner or operator.

(8) Other relevant factors.

(e) The Director of an approved State may determine that remediation of a release of an appendix II constituent from a MSWLF unit is not necessary if the owner or operator demonstrates to the satisfaction of the Director of the approved State that:

(1) The ground-water is additionally contaminated by substances that have originated from a source other than a MSWLF unit and those substances are present in concentrations such that cleanup of the release from the MSWLF unit would provide no significant reduction in risk to actual or potential receptors; or

(2) The constituent(s) is present in ground water that:

(i) Is not currently or reasonably expected to be a source of drinking water; and

(ii) Is not hydraulically connected with waters to which the hazardous constituents are migrating or are likely to migrate in a concentration(s) that would exceed the ground-water protection standards established under § 258.55 (h) or (i); or

(3) Remediation of the release(s) is technically impracticable; or

(4) Remediation results in unacceptable cross-media impacts.

(f) A determination by the Director of an approved State pursuant to paragraph (e) of this section shall not affect the authority of the State to require the owner or operator to undertake source control measures or other measures that may be necessary to eliminate or minimize further releases to the ground-water, to prevent exposure to the ground-water, or to remediate the ground-water to concentrations that are technically practicable and significantly reduce threats to human health or the environment.

§ 258.58 Implementation of the corrective action program.

(a) Based on the schedule established under § 258.57(d) for initiation and completion of remedial activities the owner/operator must:

(1) Establish and implement a corrective action ground-water monitoring program that:

(i) At a minimum, meet the requirements of an assessment monitoring program under § 258.55;

(ii) Indicate the effectiveness of the corrective action remedy; and

(iii) Demonstrate compliance with ground-water protection standard pursuant to paragraph (e) of this section.

(2) Implement the corrective action remedy selected under § 258.57; and

(3) Take any interim measures necessary to ensure the protection of human health and the environment. Interim measures should, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to § 258.57. The following factors must be considered by an owner or operator in determining whether interim measures are necessary:

(i) Time required to develop and implement a final remedy;

(ii) Actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;

(iii) Actual or potential contamination of drinking water supplies or sensitive ecosystems;

(iv) Further degradation of the ground-water that may occur if remedial action is not initiated expeditiously;

(v) Weather conditions that may cause hazardous constituents to migrate or be released;

(vi) Risks of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or

failure of a container or handling system; and

(vii) Other situations that may pose threats to human health and the environment.

(b) An owner or operator may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with requirements of § 258.57(b) are not being achieved through the remedy selected. In such cases, the owner or operator must implement other methods or techniques that could practicably achieve compliance with the requirements, unless the owner or operator makes the determination under § 258.58(c).

(c) If the owner or operator determines that compliance with requirements under § 258.57(b) cannot be practically achieved with any currently available methods, the owner or operator must:

(1) Obtain certification of a qualified ground-water scientist or approval by the Director of an approved State that compliance with requirements under § 258.57(b) cannot be practically achieved with any currently available methods;

(2) Implement alternate measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment; and

(3) Implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are:

(i) Technically practicable; and

(ii) Consistent with the overall objective of the remedy.

(4) Notify the State Director within 14 days that a report justifying the alternative measures prior to implementing the alternative measures has been placed in the operating record.

(d) All solid wastes that are managed pursuant to a remedy required under § 258.57, or an interim measure required under § 258.58(a)(3), shall be managed in a manner:

(1) That is protective of human health and the environment; and

(2) That complies with applicable RCRA requirements.

(e) Remedies selected pursuant to § 258.57 shall be considered complete when:

(1) The owner or operator complies with the ground-water protection standards established under §§ 258.55(h) or (i) at all points within the plume of contamination that lie beyond the ground-water monitoring well system established under § 258.51(a).

(2) Compliance with the ground-water protection standards established under §§ 258.55(h) or (i) has been achieved by demonstrating that concentrations of appendix II constituents have not exceeded the ground-water protection standard(s) for a period of three consecutive years using the statistical procedures and performance standards in § 258.53(g) and (h). The Director of an approved State may specify an alternative length of time during which the owner or operator must demonstrate that concentrations of appendix II constituents have not exceeded the ground-water protection standard(s) taking into consideration:

(i) Extent and concentration of the release(s);

(ii) Behavior characteristics of the hazardous constituents in the ground-water;

(iii) Accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that may affect the accuracy; and

(iv) Characteristics of the ground-water.

(3) All actions required to complete the remedy have been satisfied.

(f) Upon completion of the remedy, the owner or operator must notify the State Director within 14 days that a certification that the remedy has been completed in compliance with the requirements of § 258.58(e) has been placed in the operating record. The certification must be signed by the owner or operator and by a qualified ground-water scientist or approved by the Director of an approved State.

(g) When, upon completion of the certification, the owner or operator determines that the corrective action remedy has been completed in accordance with the requirements under paragraph (e) of this section, the owner or operator shall be released from the requirements for financial assurance for corrective action under § 258.73.

§ 258.59 [Reserved]

Subpart F—Closure And Post-Closure Care

§ 258.60 Closure criteria.

(a) Owner or operator of all MSWLF units must install a final cover system that is designed to minimize infiltration and erosion. The final cover system must be comprised of an erosion layer underlain by an infiltration layer as follows:

(1) The infiltration layer must be comprised of a minimum of 18 inches of earthen material that has a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present, or a permeability no greater than 1×10^{-5} cm/sec, whichever is less, and

(2) The erosion layer must consist of a minimum of 6 inches of earthen material that is capable of sustaining native plant growth.

(b) The Director of an approved State may approve an alternative final cover design that includes:

(1) An infiltration layer that achieves an equivalent reduction in infiltration as the infiltration layer specified in paragraph (a)(1) of this section, and

(2) An erosion layer that provides equivalent protection from wind and water erosion as the erosion layer specified in paragraph (a)(2) of this section.

(c) The owner or operator must prepare a written closure plan that describes the steps necessary to close all MSWLF units at any point during its active life in accordance with the cover design requirements in § 258.60(a) or (b), as applicable. The closure plan, at a minimum, must include the following information:

(1) A description of the final cover, designed in accordance with § 258.60(a) and the methods and procedures to be used to install the cover;

(2) An estimate of the largest area of the MSWLF unit ever requiring a final cover as required under § 258.60(a) at any time during the active life;

(3) An estimate of the maximum inventory of wastes ever on-site over the active life of the landfill facility; and

(4) A schedule for completing all activities necessary to satisfy the closure criteria in § 258.60.

(d) The owner or operator must notify the State Director that a closure plan has been prepared and placed in the operating record no later than the effective date of this part, or by the initial receipt of waste, whichever is later.

(e) Prior to beginning closure of each MSWLF unit as specified in § 258.60(f), an owner or operator must notify the State Director that a notice of the intent to close the unit has been placed in the operating record.

(f) The owner or operator must begin closure activities of each MSWLF unit no later than 30 days after the date on which the MSWLF unit receives the known final receipt of wastes or, if the MSWLF unit has remaining capacity and there is a reasonable likelihood that the MSWLF unit will receive additional wastes, no later than one year after the most recent receipt of wastes. Extensions beyond the one-year deadline for beginning closure may be

granted by the Director of an approved State if the owner or operator demonstrates that the MSWLF unit has the capacity to receive additional wastes and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environmental from the unclosed MSWLF unit.

(g) The owner or operator of all MSWLF units must complete closure activities of each MSWLF unit in accordance with the closure plan within 180 days following the beginning of closure as specified in paragraph (f) of this section. Extensions of the closure period may be granted by the Director of an approved State if the owner or operator demonstrates that closure will, of necessity, take longer than 180 days and he has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed MSWLF unit.

(h) Following closure of each MSWLF unit, the owner or operator must notify the State Director that a certification, signed by an independent registered professional engineer or approved by Director of an approved State, verifying that closure has been completed in accordance with the closure plan, has been placed in the operating record.

(i) (1) Following closure of all MSWLF units, the owner or operator must record a notation on the deed to the landfill facility property, or some other instrument that is normally examined during title search, and notify the State Director that the notation has been recorded and a copy has been placed in the operating record.

(2) The notation on the deed must in perpetuity notify any potential purchaser of the property that:

(i) The land has been used as a landfill facility; and

(ii) Its use is restricted under § 258.61(c)(3).

(j) The owner or operator may request permission from the Director of an approved State to remove the notation from the deed if all wastes are removed from the facility.

§ 258.61 Post-closure care requirements.

(a) Following closure of each MSWLF unit, the owner or operator must conduct post-closure care. Post-closure care must be conducted for 30 years, except as provided under paragraph (b) of this section, and consist of at least the following:

(1) Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and run-off from eroding or otherwise damaging the final cover;

(2) Maintaining and operating the leachate collection system in accordance with the requirements in § 258.40. The Director of an approved State may allow the owner or operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment;

(3) Monitoring the ground water in accordance with the requirements of subpart E of this part and maintaining the ground-water monitoring system, if applicable; and

(4) Maintaining and operating the gas monitoring system in accordance with the requirements of § 258.23.

(b) The length of the post-closure care period may be:

(1) Decreased by the Director of an approved State if the owner or operator demonstrates that the reduced period is sufficient to protect human health and the environment and this demonstration is approved by the Director of an approved State; or

(2) Increased by the Director of an approved State if the Director of an approved State determines that the lengthened period is necessary to protect human health and the environment.

(c) The owner or operator of all MSWLF units must prepare a written post-closure plan that includes, at a minimum, the following information:

(1) A description of the monitoring and maintenance activities required in § 258.61(a) for each MSWLF unit, and the frequency at which these activities will be performed;

(2) Name, address, and telephone number of the person or office to contact about the facility during the post-closure period; and

(3) A description of the planned uses of the property during the post-closure period. Post-closure use of the property shall not disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in this Part 258. The Director of an approved State may approve any other disturbance if the owner or operator demonstrates that disturbance of the final cover, liner or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

(d) The owner or operator must notify the State Director that a post-closure plan has been prepared and placed in the operating record no later than the effective date of this part, October 9, 1991, or by the initial receipt of waste, whichever is later.

(e) Following completion of the post-closure care period for each MSWLF unit, the owner or operator must notify the State Director that a certification, signed by an independent registered professional engineer or approved by the Director of an approved State, verifying that post-closure care has been completed in accordance with the post-closure plan, has been placed in the operating record.

§§ 258.62—258.69 [Reserved]

Subpart G—Financial Assurance Criteria

§ 258.70 Applicability and effective date.

(a) The requirements of this section apply to owners and operators of all MSWLF units, except owners or operators who are State or Federal government entities whose debts and liabilities are the debts and liabilities of a State or the United States.

(b) The requirements of this section are effective April 9, 1994.

§ 258.71 Financial assurance for closure.

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to close the largest area of all MSWLF unit ever requiring a final cover as required under § 258.60 at any time during the active life in accordance with the closure plan. The owner or operator must notify the State Director that the estimate has been placed in the operating record.

(1) The cost estimate must equal the cost of closing the largest area of all MSWLF unit ever requiring a final cover at any time during the active life when the extent and manner of its operation would make closure the most expensive, as indicated by its closure plan (see § 258.60(c)(2) of this part).

(2) During the active life of the MSWLF unit, the owner or operator must annually adjust the closure cost estimate for inflation.

(3) The owner or operator must increase the closure cost estimate and the amount of financial assurance provided under paragraph (b) of this section if changes to the closure plan or MSWLF unit conditions increase the maximum cost of closure at any time during the remaining active life.

(4) The owner or operator may reduce the closure cost estimate and the amount of financial assurance provided under paragraph (b) of this section if the cost estimate exceeds the maximum cost of closure at any time during the remaining life of the MSWLF unit. The

owner or operator must notify the State Director that the justification for the reduction of the closure cost estimate and the amount of financial assurance has been placed in the operating record.

(b) The owner or operator of each MSWLF unit must establish financial assurance for closure of the MSWLF unit in compliance with § 258.74. The owner or operator must provide continuous coverage for closure until released from financial assurance requirements by demonstrating compliance with § 258.60(h) and (i).

§ 258.72 Financial assurance for post-closure care.

(a) The owner or operator must have a detailed written estimate, in current dollars, of the cost of hiring a third party to conduct post-closure care for the MSWLF unit in compliance with the post-closure plan developed under § 258.61 of this part. The post-closure cost estimate used to demonstrate financial assurance in paragraph (b) of this section must account for the total costs of conducting post-closure care, including annual and periodic costs as described in the post-closure plan over the entire post-closure care period. The owner or operator must notify the State Director that the estimate has been placed in the operating record.

(1) The cost estimate for post-closure care must be based on the most expensive costs of post-closure care during the post-closure care period.

(2) During the active life of the MSWLF unit and during the post-closure care period, the owner or operator must annually adjust the post-closure cost estimate for inflation.

(3) The owner or operator must increase the post-closure care cost estimate and the amount of financial assurance provided under paragraph (b) of this section if changes in the post-closure plan or MSWLF unit conditions increase the maximum costs of post-closure care.

(4) The owner or operator may reduce the post-closure cost estimate and the amount of financial assurance provided under paragraph (b) of this section if the cost estimate exceeds the maximum costs of post-closure care remaining over the post-closure care period. The owner or operator must notify the State Director that the justification for the reduction of the post-closure cost estimate and the amount of financial assurance has been placed in the operating record.

(b) The owner or operator of each MSWLF unit must establish, in a manner in accordance with § 258.74, financial assurance for the costs of post-closure care as required under § 258.61 of this part. The owner or operator must provide continuous coverage for post-closure care until released from financial assurance requirements for post-closure care by demonstrating compliance with § 258.61(e).

§ 258.73 Financial assurance for corrective action.

(a) An owner or operator of a MSWLF unit required to undertake a corrective action program under § 258.58 of this part must have a detailed written estimate, in current dollars, of the cost of hiring a third party to perform the corrective action in accordance with the program required under § 258.58 of this part. The corrective action cost estimate must account for the total costs of corrective action activities as described in the corrective action plan for the entire corrective action period. The owner or operator must notify the State Director that the estimate has been placed in the operating record.

(1) The owner or operator must annually adjust the estimate for inflation until the corrective action program is completed in accordance with § 258.58(f) of this part.

(2) The owner or operator must increase the corrective action cost estimate and the amount of financial assurance provided under paragraph (b) of this section if changes in the corrective action program or MSWLF unit conditions increase the maximum costs of corrective action.

(3) The owner or operator may reduce the amount of the corrective action cost estimate and the amount of financial assurance provided under paragraph (b) of this section if the cost estimate exceeds the maximum remaining costs of corrective action. The owner or operator must notify the State Director that the justification for the reduction of the corrective action cost estimate and the amount of financial assurance has been placed in the operating record.

(b) The owner or operator of each MSWLF unit required to undertake a corrective action program under § 258.58 of this part must establish, in a manner in accordance with § 258.74, financial assurance for the most recent corrective action program. The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements for corrective action by demonstrating compliance with § 258.58 (f) and (g).

§ 258.74 Allowable mechanisms.

The mechanisms used to demonstrate financial assurance under this section must ensure that the funds necessary to meet the costs of closure, post-closure care, and corrective action for known releases will be available whenever they are needed. Owners and operators must choose from the options specified in paragraphs (a) through (j) of this section.

(a) *Trust Fund.* (1) An owner or operator may satisfy the requirements of this section by establishing a trust fund which conforms to the requirements of this paragraph. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a Federal or State agency. A copy of the trust agreement must be placed in the facility's operating record.

(2) Payments into the trust fund must be made annually by the owner or operator over the term of the initial permit or over the remaining life of the MSWLF unit, whichever is shorter, in the case of a trust fund for closure or post-closure care, or over one-half of the estimated length of the corrective action program in the case of corrective action for known releases. This period is referred to as the pay-in period.

(3) For a trust fund used to demonstrate financial assurance for closure and post-closure care, the first payment into the fund must be at least equal to the current cost estimate for closure or post-closure care, except as provided in paragraph (j) of this section, divided by the number of years in the pay-in period as defined in paragraph (a)(2) of this section. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{CE - CV}{Y}$$

where CE is the current cost estimate for closure or post-closure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half of the current cost estimate for corrective action, except as provided in paragraph (j) of this section, divided by the number of years in the corrective action pay-in period as defined in paragraph (a)(2) of this section. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{RB - CV}{Y}$$

where RB is the most recent estimate of the required trust fund balance for corrective action (i.e., the total costs that will be incurred during the second half of the corrective action period), CV is the current value of the trust fund, and Y is the number of years remaining on the pay-in period.

(5) The initial payment into the trust fund must be made before the initial receipt of waste or before the effective date of this section (April 9, 1994), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58.

(6) If the owner or operator establishes a trust fund after having used one or more alternate mechanisms specified in this section, the initial payment into the trust fund must be at least the amount that the fund would contain if the trust fund were established initially and annual payments made according to the specifications of this paragraph and § 270.74(a) of this section, as applicable.

(7) The owner or operator, or other person authorized to conduct closure, post-closure care, or corrective action activities may request reimbursement from the trustee for these expenditures. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, post-closure care, or corrective action, and if justification and documentation of the cost is placed in the operating record. The owner or operator must notify the State Director that the documentation of the justification for reimbursement has been placed in the operating record and that reimbursement has been received.

(8) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance as specified in this section or if he is no longer required to demonstrate financial responsibility in accordance with the requirements of §§ 258.71(b), 258.72(b), or 258.73(b).

(b) *Surety Bond Guaranteeing Payment or Performance.* (1) An owner or operator may demonstrate financial assurance for closure or post-closure care by obtaining a payment or performance surety bond which conforms to the requirements of this paragraph. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this paragraph. The bond must be effective before the initial receipt of waste or before the effective date of this section (April 9, 1994), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58. The owner or operator must notify the State Director that a copy of the bond has been placed in the operating record. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury.

(2) The penal sum of the bond must be in an amount at least equal to the current closure, post-closure care or corrective action cost estimate, whichever is applicable, except as provided in § 258.74(k).

(3) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(4) The owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of § 258.74(a) except the requirements for initial payment and subsequent annual payments specified in § 258.74 (a)(2), (3), (4) and (5).

(5) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the trustee.

(6) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner and operator and to the State Director 120 days in advance of cancellation. If the surety cancels the bond, the owner or operator must obtain alternate financial assurance as specified in this section.

(7) The owner or operator may cancel the bond only if alternate financial assurance is substituted as specified in this section or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with § 258.71(b), 258.72(b) or 258.73(b).

(c) *Letter of Credit.* (1) An owner or operator may satisfy the requirements of this section by obtaining an irrevocable standby letter of credit which conforms to the requirements of this paragraph. The letter of credit must be effective before the initial receipt of waste or before the effective date of this section (April 9, 1994), whichever is later, in the case of closure and post-closure care, or no later than 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58. The owner or operator must notify the State Director that a copy of the letter of credit has been placed in the operating record. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a Federal or State agency.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the following information: Name, and address of the facility, and the amount of funds assured, must be included with the letter of credit in the operating record.

(3) The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure, post-closure care or corrective action, whichever is applicable, except as provided in § 258.74(a). The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has cancelled the letter of credit by sending notice of cancellation by certified mail to the owner and operator and to the State Director 120 days in advance of cancellation. If the letter of credit is cancelled by the issuing institution, the owner or operator must obtain alternate financial assurance.

(4) The owner or operator may cancel the letter of credit only if alternate financial assurance is substituted as specified in this section or if the owner or operator is released from the requirements of this section in accordance with § 258.71(b), 258.72(b) or 258.73(b).

(d) *Insurance.* (1) An owner or operator may demonstrate financial assurance for closure and post-closure care by obtaining insurance which conforms to the requirements of this paragraph. The insurance must be effective before the initial receipt of waste or before the effective date of this section (April 9, 1994), whichever is later. At a minimum, the insurer must be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more States. The owner or operator must notify the State Director that a copy of the insurance policy has been placed in the operating record.

(2) The closure or post-closure care insurance policy must guarantee that funds will be available to close the MSWLF unit whenever final closure occurs or to provide post-closure care for the MSWLF unit whenever the post-closure care period begins, whichever is applicable. The policy must also guarantee that once closure or post-closure care begins, the insurer will be

responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or post-closure care, up to an amount equal to the face amount of the policy.

(3) The insurance policy must be issued for a face amount at least equal to the current cost estimate for closure or post-closure care, whichever is applicable, except as provided in § 258.74(a). The term *face amount* means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) An owner or operator, or any other person authorized to conduct closure or post-closure care, may receive reimbursements for closure or post-closure expenditures, whichever is applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or post-closure care, and if justification and documentation of the cost is placed in the operating record. The owner or operator must notify the State Director that the documentation of the justification for reimbursement has been placed in the operating record and that reimbursement has been received.

(5) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(6) The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner and operator and to the State Director 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator must obtain alternate financial assurance as specified in this section.

(7) For insurance policies providing coverage for post-closure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week Treasury securities.

(8) The owner or operator may cancel the insurance policy only if alternate financial assurance is substituted as specified in this section or if the owner or operator, is no longer required to demonstrate financial responsibility in accordance with the requirements of § 258.71(b), 258.72(b) or 258.73(b).

(e) *Corporate Financial Test.* [Reserved]

(f) *Local Government Financial Test.* [Reserved]

(g) *Corporate Guarantee.* [Reserved]

(h) *Local Government Guarantee.* [Reserved]

(i) *State-Approved Mechanism.* An owner or operator may satisfy the requirements of this section by obtaining any other mechanism that meets the criteria specified in § 258.74(1), and that is approved by the Director of an approved State.

(j) *State Assumption of Responsibility.* If the State Director either assumes legal responsibility for an owner or operator's compliance with the closure, post-closure care and/or corrective action requirements of this part, or assures that the funds will be available from State sources to cover the requirements, the owner or operator will be in compliance with the requirements of this section. Any State assumption of responsibility must meet the criteria specified in § 258.74(l).

(k) *Use of Multiple Financial Mechanisms.* An owner or operator may satisfy the requirements of this section by establishing more than one financial mechanism per facility. The mechanisms must be as specified in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), and (j) of this section, except that it is the combination of mechanisms, rather than the single mechanism, which must provide financial assurance for an amount at least equal to the current cost estimate for closure, post-closure care or corrective action, whichever is applicable. The financial test and a guarantee provided by a corporate parent, sibling, or grandparent may not be combined if the financial statements of the two firms are consolidated.

(l) The language of the mechanisms listed in paragraphs (a), (b), (c), (d), (e), (f), (g), (h), (i), and (j) of this section must ensure that the instruments satisfy the following criteria:

(1) The financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed;

(2) The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

(3) The financial assurance mechanisms must be obtained by the owner or operator by the effective date of these requirements or prior to the initial receipt of solid waste, whichever is later, in the case of closure and post-closure care, and no later that 120 days after the corrective action remedy has been selected in accordance with the requirements of § 258.58, until the owner or operator is released from the financial assurance requirements under §§ 258.71, 258.72 and 258.73.

(4) The financial assurance mechanisms must be legally valid, binding, and enforceable under State and Federal law.

Appendix I to this Part 258—Constituents for Detection Monitoring [1]

Common name [2]	CAS RN [3]
Inorganic Constituents:	
(1) Antimony	(Total)
(2) Arsenic	(Total)
(3) Barium	(Total)
(4) Beryllium	(Total)
(5) Cadmium	(Total)
(6) Chromium	(Total)
(7) Cobalt	(Total)
(8) Copper	(Total)
(9) Lead	(Total)
(10) Nickel	(Total)
(11) Selenium	(Total)
(12) Silver	(Total)
(13) Thallium	(Total)
(14) Vanadium	(Total)
(15) Zinc	(Total)
Organic Constituents:	
(16) Acetone	67-64-1
(17) Acrylonitrile	107-13-1
(18) Benzene	71-43-2
(19) Bromochloromethane	74-97-5
(20) Bromodichloromethane	75-27-4
(21) Bromoform; Tribromomethane	75-25-2
(22) Carbon disulfide	75-15-0
(23) Carbon tetrachloride	56-23-5
(24) Chlorobenzene	108-90-7
(25) Chloroethane; Ethyl chloride	75-00-3
(26) Chloroform; Trichloromethane	67-66-3
(27) Dibromochloromethane; Chlorodibromomethane	124-48-1
(28) 1,2-Dibromo-3-chloropropane; DBCP	96-12-8
(29) 1,2-Dibromoethane; Ethylene dibromide; EDB	106-93-4
(30) o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1
(31) p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7
(32) trans-1,4-Dichloro-2-butene	110-57-6
(33) 1,1-Dichloroethane; Ethylidene chloride	75-34-3
(34) 1,2-Dichloroethane; Ethylene dichloride	107-06-2
(35) 1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75-35-4
(36) cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2

Common name [2]	CAS RN [3]
(37) trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene	156-60-5
(38) 1,2-Dichloropropane; Propylene dichloride	78-87-5
(39) cis-1,3-Dichloropropene	10061-01-5
(40) trans-1,3-Dichloropropene	10061-02-6
(41) Ethylbenzene	100-41-4
(42) 2-Hexanone; Methyl butyl ketone	591-78-6
(43) Methyl bromide; Bromomethane	74-83-9
(44) Methyl chloride; Chloromethane	74-87-3
(45) Methylene bromide; Dibromomethane	74-95-3
(46) Methylene chloride; Dichloromethane	75-09-2
(47) Methyl ethyl ketone; MEK; 2-Butanone	78-93-3
(48) Methyl iodide; Iodomethane	74-88-4
(49) 4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1
(50) Styrene	100-42-5
(51) 1,1,1,2-Tetrachloroethane	630-20-6
(52) 1,1,2,2-Tetrachloroethane	79-34-5
(53) Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127-18-4
(54) Toluene	108-88-3
(55) 1,1,1-Trichloroethane; Methylchloroform	71-55-6
(56) 1,1,2-Trichloroethane	79-00-5
(57) Trichloroethylene; Trichloroethene	79-01-6
(58) Trichlorofluoromethane; CFC-11	75-69-4
(59) 1,2,3-Trichloropropane	96-18-4
(60) Vinyl acetate	108-05-4
(61) Vinyl chloride	75-01-4
(62) Xylenes	1330-20-7

[1] This list contains 47 volatile organics for which possible analytical procedures provided in EPA Report SW-846 "Test Methods for Evaluating Solid Waste," third edition, November 1986, as revised December 1987, includes Method 8260; and 15 metals for which SW-846 provides either Method 6010 or a method from the 7000 series of methods.

[2] Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

[3] Chemical Abstracts Service registry number. Where "Total" is entered, all species in the ground water that contain this element are included.

Appendix II to this Part 258—List of Hazardous Inorganic and Organic Constituents [1]

Common Name [2]	CAS RN [3]	Chemical abstracts service index name [4]	Suggested methods [5]	PQL (μg/L) [6]
Acenaphthene	83-32-9	Acenaphthylene, 1,2-dihydro-	8100	200
			8270	10
Acenaphthylene	208-96-8	Acenaphthylene	8100	200
			8270	10
Acetone	67-64-1	2-Propanone	8260	100
Acetonitrile; Methyl cyanide	75-05-8	Acetonitrile	8015	100
Acetophenone	98-86-2	Ethanone, 1-phenyl-	8270	10
2-Acetylaminofluorene; 2-AAF	53-96-3	Acetamide, N-9H-fluoren-2-yl-	8270	20
Acrolein	107-02-8	2-Propenal	8030	5
			8260	100
Acrylonitrile	107-13-1	2-Propenenitrile	8030	5
			8260	200
Aldrin	309-00-2	1,4:5,8-Dimethanonaphthalene, 1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro- (1α,4α,4aβ,5α,8α,8aβ)-	8080	0.05
			8270	10
Allyl chloride	107-05-1	1-Propene, 3-chloro-	8010	5
			8260	10
4-Aminobiphenyl	92-67-1	[1,1¹-Biphenyl]-4-amine	8270	20
Anthracene	120-12-7	Anthracene	8100	200
			8270	10
Antimony	(Total)	Antimony	6010	300
			7040	2000
			7041	30
Arsenic	(Total)	Arsenic	6010	500
			7060	10
			7061	20
Barium	(Total)	Barium	6010	20
			7080	1000
Benzene	71-43-2	Benzene	8020	2
			8021	0.1
			8260	5
Benzo[a]anthracene; Benzanthracene	56-55-3	Benz[a]anthracene	8100	200
			8270	10
Benzo[b]fluoranthene	205-99-2	Benz[e]acephenanthrylene	8100	200
			8270	10
Benzo[k]fluoranthene	207-08-9	Benzo[k]fluoranthene	8100	200
			8270	10
Benzo[ghi]perylene	191-24-2	Benzo[ghi]perylene	8100	200
			8270	10
Benzo[a]pyrene	50-32-8	Benzo[a]pyrene	8100	200
			8270	10
Benzyl alcohol	100-51-6	Benzenemethanol	8270	20
Beryllium	(Total)	Beryllium	6010	3
			7090	50
			7091	2
alpha-BHC	319-84-6	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α,3β,4α,5β,6β)-	8080	0.05
			8270	10
beta-BHC	319-85-7	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2β,3α,4β,5α,6β)-	8080	0.05
			8270	20
delta-BHC	319-86-8	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α,3α,4β,5α,6β)-	8080	0.1
			8270	20

Common Name [2]	CAS RN [3]	Chemical abstracts service index name [4]	Suggested methods [5]	PQL (µg/L) [6]
gamma-BHC; Lindane	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α,3β,4α,5α,6β)-	8080	0.05
			8270	20
Bis(2-chloroethoxy)methane	111-91-1	Ethane, 1,1[1]-[methylenebis(oxy)]bis[2-chloro-	8110	5
			8270	10
Bis(2-chloroethyl) ether; Dichloroethyl ether	111-44-4	Ethane, 1,1[1]-oxybis[2-chloro-	8110	3
			8270	10
Bis-(2-chloro-1-methylethyl) ether; 2,2[1]-Dichlorodiisopropyl ether; DCIP, See note 7	108-60-1	Propane, 2,2[1]-oxybis[1-chloro-	8110	10
			8270	10
Bis(2-ethylhexyl) phthalate	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester	8060	20
Bromochloromethane; Chlorobromomethane	74-97-5	Methane, bromochloro-	8021	0.1
			8260	5
Bromodichloromethane; Dibromochloromethane	75-27-4	Methane, bromodichloro-	8010	1
			8021	0.2
			8260	5
Bromoform; Tribromomethane	75-25-2	Methane, tribromo-	8010	2
			8021	15
			8260	5
4-Bromophenyl phenyl ether	101-55-3	Benzene, 1-bromo-4-phenoxy-	8110	25
			8270	10
Butyl benzyl phthalate; Benzyl butyl phthalate	85-68-7	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester	8060	5
			8270	10
Cadmium	(Total)	Cadmium	6010	40
			7130	50
			7131	1
Carbon disulfide	75-15-0	Carbon disulfide	8260	100
Carbon tetrachloride	56-23-5	Methane, tetrachloro-	8010	1
			8021	0.1
			8260	10
Chlordane	See Note 8	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-.	8080	0.1
			8270	50
p-Chloroaniline	106-47-8	Benzenamine, 4-chloro-	8270	20
Chlorobenzene	108-90-7	Benzene, chloro-	8010	2
			8020	2
			8021	0.1
			8260	5
Chlorobenzilate	510-15-6	Benzeneacetic acid, 4-chloro-α-(4-chlorophenyl)-α-hydroxy-, ethyl ester.	8270	10
p-Chloro-m-cresol; 4-Chloro-3-methylphenol	59-50-7	Phenol, 4-chloro-3-methyl-	8040	5
			8270	20
Chloroethane; Ethyl chloride	75-00-3	Ethane, chloro-	8010	5
			8021	1
			8260	10
Chloroform; Trichloromethane	67-66-3	Methane, trichloro-	8010	0.5
			8021	0.2
			8260	5
2-Chloronaphthalene	91-58-7	Naphthalene, 2-chloro-	8120	10
			8270	10
2-Chlorophenol	95-57-8	Phenol, 2-chloro-	8040	5
			8270	10
4-Chlorophenyl phenyl ether	7005-72-3	Benzene, 1-chloro-4-phenoxy-	8110	40
			8270	10
Chloroprene	126-99-8	1,3-Butadiene, 2-chloro-	8010	50
			8260	20
Chromium	(Total)	Chromium	6010	70
			7190	500
			7191	10
Chrysene	218-01-9	Chrysene	8100	200
			8270	10
Cobalt	(Total)	Cobalt	6010	70
			7200	500
			7201	10
Copper	(Total)	Copper	6010	60
			7210	200
			7211	10
m-Cresol; 3-methylphenol	108-39-4	Phenol, 3-methyl-	8270	10
o-Cresol; 2-methylphenol	95-48-7	Phenol, 2-methyl-	8270	10
p-Cresol; 4-methylphenol	106-44-5	Phenol, 4-methyl-	8270	10
Cyanide	57-12-5	Cyanide	9010	200
2,4-D; 2,4-Dichlorophenoxyacetic acid	94-75-7	Acetic acid, (2,4-dichlorophenoxy)-	8150	10
4,4[1]-DDD	72-54-8	Benzene 1,1[1]-(2,2-dichloroethylidene)bis[4-chloro-	8080	0.1
			8270	10
4,4[1]-DDE	72-55-9	Benzene, 1,1[1]-(dichloroethyenylidene)bis[4-chloro-	8080	0.05
			8270	10
4,4[1]-DDT	50-29-3	Benzene, 1,1[1]-(2,2,2-trichloroethylidene)bis[4-chloro-	8080	0.1
			8270	10
Diallate	2303-16-4	Carbamothioic acid, bis(1-methylethyl)-,S-(2,3-dichloro-2-propenyl) ester.	8270	10

Common Name [2]	CAS RN [3]	Chemical abstracts service index name [4]	Suggested methods [5]	PQL (µg/L) [6]
Dibenz[a,h]anthracene	53-70-3	Dibenz[a,h]anthracene	8100	200
			8270	10
Dibenzofuran	132-64-9	Dibenzofuran	8270	10
Dibromochloromethane; Chlorodibromomethane	124-48-1	Methane, dibromochloro-	8010	1
			8021	0.3
			8260	5
1,2-Dibromo-3-chloropropane; DBCP	96-12-8	Propane, 1,2-dibromo-3-chloro-	8011	0.1
			8021	30
			8260	25
1,2-Dibromoethane; Ethylene dibromide; EDB	106-93-4	Ethane, 1,2-dibromo-	8011	0.1
			8021	10
			8260	5
Di-n-butyl phthalate	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester	8060	5
			8270	10
o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1	Benzene, 1,2-dichloro-	8010	2
			8020	5
			8021	0.5
			8120	10
			8260	5
			8270	10
m-Dichlorobenzene; 1,3-Dichlorobenzene	541-73-1	Benzene, 1,3-Dichloro-	8010	5
			8020	5
			8021	0.2
			8120	10
			8260	5
			8270	10
p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7	Benzene, 1,4-dichloro-	8010	2
			8020	5
			8021	0.1
			8120	15
			8260	5
			8270	10
3,3¹-Dichlorobenzidine	91-94-1	[1,1¹-Biphenyl]-4,4¹-diamine, 3,3¹-dichloro-	8270	20
trans-1,4-Dichloro-2-butene	110-57-6	2-Butene, 1,4-dichloro-, (E)-	8260	100
Dichlorodifluoromethane; CFC 12;	75-71-8	Methane, dichlorodifluoro-	8021	0.5
			8260	5
1,1-Dichloroethane; Ethylidene chloride	75-34-3	Ethane, 1,1-dichloro-	8010	1
			8021	0.5
			8260	5
1,2-Dichloroethane; Ethylene dichloride	107-06-2	Ethane, 1,1-dichloro-	8010	0.5
			8021	0.3
			8260	5
1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75-35-4	Ethene, 1,1-dichloro-	8010	1
			8021	0.5
			8260	5
cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2	Ethene, 1,2-dichloro-, (Z)-	8021	0.2
			8260	5
trans-1,2-Dichloroethylene trans-1,2-Dichloroethene	156-60-5	Ethene, 1,2-dichloro-, (E)-	8010	1
			8021	0.5
			8260	5
2,4-Dichlorophenol	120-83-2	Phenol, 2,4-dichloro-	8040	5
			8270	10
2,6-Dichlorophenol	87-65-0	Phenol, 2,6-dichloro-	8270	10
1,2-Dichloropropane; Propylene dichloride	78-87-5	Propane, 1,2-dichloro-	8010	0.5
			8021	0.05
			8260	5
1,3-Dichloropropane; Trimethylene dichloride	142-28-9	Propane, 1,3-dichloro-	8021	0.3
			8260	5
2,2-Dichloropropane; Isopropylidene chloride	594-20-7	Propane, 2,2-dichloro-	8021	0.5
			8260	15
1,1-Dichloropropene	563-58-6	1-Propene, 1,1-dichloro-	8021	0.2
			8260	5
cis-1,3-Dichloropropene	10061-01-5	1-Propene, 1,3-dichloro-, (Z)-	8010	20
			8260	10
trans-1,3-Dichloropropene	10061-02-6	1-Propene, 1,3-dichloro-, (E)-	8010	5
			8260	10
Dieldrin	60-57-1	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aα,2β,2aα,3β,6β,6aα,7β,7aα)-.	8080	0.05
			8270	10
Diethyl phthalate	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester	8060	5
			8270	10
0,0-Diethyl 0-2-pyrazinyl phosphorothioate; Thionazin	297-97-2	Phosphorothioic acid, 0,0-diethyl 0-pyrazinyl ester	8141	5
			8270	20
Dimethoate	60-51-5	Phosphorodithioic acid, 0,0-dimethyl S-[2-(methylamino)-2-oxoethyl] ester.	8141	3
			8270	20
p-(Dimethylamino)azobenzene	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-	8270	10
7,12-Dimethylbenz[a]anthracene	57-97-6	Benz[a]anthracene, 7,12-dimethyl-	8270	10

—Continued

Common Name [2]	CAS RN [3]	Chemical abstracts service index name [4]	Suggested methods [5]	PQL (µg/L) [6]
3,3¹-Dimethylbenzidine	119-93-7	[1,1¹-Biphenyl]-4,4¹-diamine, 3,3¹-dimethyl-	8270	10
2,4-Dimethylphenol; m-Xylenol	105-67-9	Phenol, 2,4-dimethyl-	8040	5
			8270	10
Dimethyl phthalate	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester	8060	5
			8270	10
m-Dinitrobenzene	99-65-0	Benzene, 1,3-dinitro-	8270	20
4,6-Dinitro-o-cresol 4,6-Dinitro-2-methylphenol	534-52-1	Phenol, 2-methyl-4,6-dinitro	8040	150
			8270	50
2,4-Dinitrophenol;	51-28-5	Phenol, 2,4-dinitro-	8040	150
			8270	50
2,4-Dinitrotoluene	121-14-2	Benzene, 1-methyl-2,4-dinitro-	8090	0.2
			8270	10
2,6-Dinitrotoluene	606-20-2	Benzene, 2-methyl-1,3-dinitro-	8090	0.1
			8270	10
Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-	8150	1
			8270	20
Di-n-octyl phthalate	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester	8060	30
			8270	10
Diphenylamine	122-39-4	Benzenamine, N-phenyl-	8270	10
Disulfoton	298-04-4	Phosphorodithioic acid, 0,0-diethyl S-[2-(ethylthio)ethyl] ester	8140	2
			8141	0.5
			8270	10
Endosulfan I	959-98-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide,	8080	0.1
			8270	20
Endosulfan II	33213-65-9	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3 oxide, (3α,5aα,6β,9β, 9aα)-.	8080	0.05
			8270	20
Endosulfan sulfate	1031-07-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-,3-3-dioxide.	8080	0.5
			8270	10
Endrin	72-20-8	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aα, 2β,2aβ,3α,6α, 6aβ,7β,7aα)-.	8080	0.1
			8270	20
Endrin aldehyde	7421-93-4	1,2,4-Methenocyclopenta[cd]pentalene-5-carboxaldehyde, 2,2a,3,3,4,7-hexachlorodecahydro-, (1α,2β,2aβ,4β, 4aβ,5β,6aβ,6bβ,7R*)-.	8080	0.2
			8270	10
Ethylbenzene	100-41-4	Benzene, ethyl-	8020	2
			8221	0.05
			8260	5
Ethyl methacrylate	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester	8015	5
			8260	10
			8270	10
Ethyl methanesulfonate	62-50-0	Methanesulfonic acid, ethyl ester	8270	20
Famphur	52-85-7	Phosphorothioic acid, 0-[4-[(dimethylamino)sulfonyl]phenyl] 0,0-dimethyl ester.	8270	20
Fluoranthene	206-44-0	Fluoranthene	8100	200
			8270	10
Fluorene	86-73-7	9H-Fluorene	8100	200
			8270	10
Heptachlor	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7,8,8-heptachloro-3a,4,7,7a-tetrahydro-.	8080	0.05
			8270	10
Heptachlor epoxide	1024-57-3	2,5-Methano-2H-indeno[1,2-b]oxirene, 2,3,4,5,6,7,7-heptachloro-1a,1b,5,5a,6,6a-hexahydro-, (1aα, 1bβ, 2α, 5α, 5aβ, 6β, 6aα).	8080	1
			8270	10
Hexachlorobenzene	118-74-1	Benzene, hexachloro-	8120	0.5
			8270	10
Hexachlorobutadiene	87-68-3	1,3-Butadiene, 1,1,2,3,4,4-hexachloro-	8021	0.5
			8120	5
			8260	10
			8270	10
Hexachlorocyclopentadiene	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	8120	5
			8270	10
Hexachloroethane	67-72-1	Ethane, hexachloro-	8120	0.5
			8260	10
			8270	10
Hexachloropropene	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-	8270	10
2-Hexanone; Methyl butyl ketone	591-78-6	2-Hexanone	8260	50
Indeno(1,2,3-cd)pyrene	193-39-5	Indeno(1,2,3-cd)pyrene	8100	200
			8270	10
Isobutyl alcohol	78-83-1	1-Propanol, 2-methyl-	8015	50
			8240	100
Isodrin	465-73-6	1,4,5,8-Dimethanonaphthalene,1,2,3,4,10,10- hexachloro-1,4,4a,5,8,8a hexahydro- (1α,4α,4aβ,5β,8β,8aβ)-.	8270	20
			8260	10
Isophorone	78-59-1	2-Cyclohexen-1-one, 3,5,5-trimethyl-	8090	60
			8270	10
Isosafrole	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-	8270	10
Kepone	143-50-0	1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-.	8270	20

—Continued

Common Name [2]	CAS RN [3]	Chemical abstracts service index name [4]	Suggested methods [5]	PQL (µg/L) [6]
Lead	(Total)	Lead	6010	400
			7420	1000
			7421	10
Mercury	(Total)	Mercury	7470	2
Methacrylonitrile	126-98-7	2-Propenenitrile, 2-methyl-	8015	5
			8260	100
Methapyrilene	91-80-5	1,2-Ethanediamine, N,N-dimethyl-N[1]-2-pyridinyl-N1/2-thienylmethyl)-.	8270	100
Methoxychlor	72-43-5	Benzene,1,1[1]-(2,2,2,trichloroethylidene)bis[4-methoxy-	8080	2
			8270	10
Methyl bromide; Bromomethane	74-83-9	Methane, bromo-	8010	20
			8021	10
Methyl chloride; Chloromethane	74-87-3	Methane, chloro-	8010	1
			8021	0.3
3-Methylcholanthrene	56-49-5	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	8270	10
Methyl ethyl ketone; MEK; 2-Butanone	78-93-3	2-Butanone	8015	10
			8260	100
Methyl iodide; Iodomethane	74-88-4	Methane, iodo-	8010	40
			8260	10
Methyl methacrylate	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester	8015	2
			8260	30
Methyl methanesulfonate	66-27-3	Methanesulfonic acid, methyl ester	8270	10
2-Methylnaphthalene	91-57-6	Naphthalene, 2-methyl-	8270	10
Methyl parathion; Parathion methyl	298-00-0	Phosphorothioic acid, 0,0-dimethyl 0-(4-nitrophenyl) ester	8140	0.5
			8141	1
			8270	10
4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1	2-Pentanone, 4-methyl-	8015	5
			8260	100
Methylene bromide; Dibromomethane	74-95-3	Methane, dibromo-	8010	15
			8021	20
			8260	10
Methylene chloride; Dichloromethane	75-09-2	Methane, dichloro-	8010	5
			8021	0.2
			8260	10
Naphthalene	91-20-3	Naphthalene	8021	0.5
			8100	200
			8260	5
			8270	10
1,4-Naphthoquinone	130-15-4	1,4-Naphthalenedione	8270	10
1-Naphthylamine	134-32-7	1-Naphthalenamine	8270	10
2-Naphthylamine	91-59-8	2-Naphthalenamine	8270	10
Nickel	(Total)	Nickel	6010	150
			7520	400
o-Nitroaniline; 2-Nitroaniline	88-74-4	Benzenamine, 2-nitro-	8270	50
m-Nitroaniline; 3-Nitroanile	99-09-2	Benzenamine, 3-nitro-	8270	50
p-Nitroaniline; 4-Nitroaniline	100-01-6	Benzenamine, 4-nitro	8270	20
Nitrobenzene	98-95-3	Benzene, nitro-	8090	40
			8270	10
o-Nitrophenol; 2-Nitrophenol	88-75-5	Phenol, 2-nitro-	8040	5
			8270	10
p-Nitrophenol; 4-Nitrophenol	100-02-7	Phenol, 4-nitro-	8040	10
			8270	50
N-Nitrosodi-n-butylamine	924-16-3	1-Butanamine, N-butyl-N-nitroso-	8270	10
N-Nitrosodiethylamine	55-18-5	Ethanamine, N-ethyl-N-nitroso-	8270	20
N-Nitrosodimethylamine	62-75-9	Methanamine, N-methyl-N-nitroso-	8070	2
N-Nitrosodiphenylamine	86-30-6	Benzenamine, N-nitroso-N-phenyl-	8070	5
N-Nitrosodipropylamine; N-Nitroso-N-dipropylamine; Di-n-propylnitrosamine.	621-64-7	1-Propanamine, N-nitroso-N-propyl-	8070	10
N-Nitrosomethylethalamine	10595-95-6	Ethanamine, N-methyl-N-nitroso-	8270	10
N-Nitrosopiperidine	100-75-4	Piperidine, 1-nitroso-	8270	20
N-Nitrosopyrrolidine	930-55-2	Pyrrolidine, 1-nitroso-	8270	40
5-Nitro-o-toluidine	99-55-8	Benzenamine, 2-methyl-5-nitro-	8270	10
Parathion	56-38-2	Phosphorothioic acid, 0,0-diethyl 0-(4-nitrophenyl) ester	8141	0.5
			8270	10
Pentachlorobenzene	608-93-5	Benzene, pentachloro-	8270	10
Pentachloronitrobenzene	82-68-8	Benzene, pentachloronitro-	8270	20
Pentachlorophenol	87-86-5	Phenol, pentachloro-	8040	5
			8270	50
Phenacetin	62-44-2	Acetamide, N-(4-ethoxyphenl)	8270	20
Phenanthrene	85-01-8	Phenanthrene	8100	200
			8270	10
Phenol	108-95-2	Phenol	8040	1
p-Phenylenediamine	106-50-3	1,4-Benzenediamine	8270	10
Phorate	298-02-2	Phosphorodithioic acid, 0,0-diethyl S-[(ethylthio)methyl] ester	8140	2
			8141	0.5
			8270	10

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Common Name [2]	CAS RN [3]	Chemical abstracts service index name [4]	Suggested methods [5]	PQL (µg/L) [6]
Polychlorinated biphenyls; PCBs; Aroclors	See Note 9	1,1'-Biphenyl, chloro derivatives	8080	50
			8270	200
Pronamide	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-	8270	10
Propionitrile; Ethyl cyanide	107-12-0	Propanenitrile	8015	60
			8260	150
Pyrene	129-00-0	Pyrene	8100	200
			8270	10
Safrole	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-	8270	10
Selenium	(Total)	Selenium	6010	750
			7740	20
			7741	20
Silver	(Total)	Silver	6010	70
			7760	100
			7761	10
Silvex; 2,4,5-TP	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-	8150	2
Styrene	100-42-5	Benzene, ethenyl-	8020	1
			8021	0.1
			8260	10
Sulfide	18496-25-8	Sulfide	9030	4000
2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-	8150	2
1,2,4,5-Tetrachlorobenzene	95-94-3	Benzene, 1,2,4,5-tetrachloro-	8270	10
1,1,1,2-Tetrachloroethane	630-20-6	Ethane, 1,1,1,2-tetrachloro-	8010	5
			8021	0.05
			8260	5
1,1,2,2-Tetrachloroethane	79-34-5	Ethane, 1,1,2,2-tetrachloro-	8010	0.5
			8021	0.1
			8260	5
Tetrachloroethylene; Tetrachlorcethene; Perchloroethylene	127-18-4	Ethene, tetrachloro-	8010	0.5
			8021	0.5
			8260	5
2,3,4,6-Tetrachlorophenol	58-90-2	Phenol, 2,3,4,6-tetrachloro-	8270	10
Thallium	(Total)	Thallium	6010	400
			7840	1000
			7841	10
Tin	(Total)	Tin	6010	40
Toluene	108-88-3	Benzene, methyl-	8020	2
			8021	0.1
			8260	5
o-Toluidine	95-53-4	Benzenamine, 2-methyl-	8270	10
Toxaphene	See Note 10	Toxaphene	8080	2
1,2,4-Trichlorobenzene	120-82-1	Benzene, 1,2,4-trichloro-	8021	0.3
			8120	0.5
			8260	10
			8270	10
1,1,1-Trichloroethane; Methylchloroform	71-55-6	Ethane, 1,1,1-trichloro-	8010	0.3
			8021	0.3
			8260	5
1,1,2-Trichloroethane	79-00-5	Ethane, 1,1,2-trichloro-	8010	0.2
			8260	5
Trichloroethylene; Trichloroethene	79-01-6	Ethene, trichloro-	8010	1
			8021	0.2
			8260	5
Trichlorofluoromethane; CFC-11	75-69-4	Methane, trichlorofluoro-	8010	10
			8021	0.3
			8260	5
2,4,5-Trichlorophenol	95-95-4	Phenol, 2,4,5-trichloro-	8270	10
2,4,6-Trichlorophenol	88-06-2	Phenol, 2,4,6-trichloro-	8040	5
			8270	10
1,2,3-Trichloropropane	96-18-4	Propane, 1,2,3-trichloro-	8010	10
			8021	5
			8260	15
0,0,0-Triethyl phosphorothioate	126-68-1	Phosphorothioic acid, 0,0,0-triethylester	8270	10
sym-Trinitrobenzene	99-35-4	Benzene, 1,3,5-trinitro-	8270	10
Vanadium	(Total)	Vanadium	6010	80
			7910	2000
			7911	40
Vinyl acetate	108-05-4	Acetic acid, ethenyl ester	8260	50
Vinyl chloride; Chloroethene	75-01-4	Ethene, chloro-	8010	2
			8021	0.4
			8260	10
Xylene (total)	See Note 11	Benzene, dimethyl-	8020	5
			8021	0.2
			8260	5
Zinc	(Total)	Zinc	6010	20
			7950	50
			7951	0.5

Notes

[1] The regulatory requirements pertain only to the list of substances; the right hand columns (Methods and PQL) are given for informational purposes only. See also footnotes 5 and 6.

[2] Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

[3] Chemical Abstracts Service registry number. Where "Total" is entered, all species in the ground water that contain this element are included.

[4] CAS index are those used in the 9th Collective Index.

[5] Suggested Methods refer to analytical procedure numbers used in EPA Report SW-846 "Test Methods for Evaluating Solid Waste", third edition, November 1986, as revised, December 1987. Analytical details can be found in SW-846 and in documentation on file at the agency. CAUTION: The methods listed are representative SW-846 procedures and may not always be the most suitable method(s) for monitoring an analyte under the regulations.

[6] Practical Quantitation Limits (PQLs) are the lowest concentrations of analytes in ground waters that can be reliably determined within specified limits of precision and accuracy by the indicated methods under routine laboratory operating conditions. The PQLs listed are generally stated to one significant figure. PQLs are based on 5 mL samples for volatile organics and 1 L samples for semivolatile organics. CAUTION: The PQL values in many cases are based only on a general estimate for the method and not on a determination for individual compounds; PQLs are not a part of the regulation.

[7] This substance is often called Bis(2-chloroisopropyl) ether, the name Chemical Abstracts Service applies to its noncommercial isomer, Propane, 2,2'-oxybis[2-chloro- (CAS RN 39638-32-9).

[8] Chlordane: This entry includes alpha-chlordane (CAS RN 5103-71-9), beta-chlordane (CAS RN 5103-74-2), gamma-chlordane (CAS RN 5566-34-7), and constituents of chlordane (CAS RN 57-74-9 and CAS RN 12789-03-6). PQL shown is for technical chlordane. PQLs of specific isomers are about 20 µg/L by method 8270.

[9] Polychlorinated biphenyls (CAS RN 1336-36-3); this category contains congener chemicals, including constituents of Aroclor 1016 (CAS RN 12674-11-2), Aroclor 1221 (CAS RN 11104-28-2), Aroclor 1232 (CAS RN 11141-16-5), Aroclor 1242 (CAS RN 53469-21-9), Aroclor 1248 (CAS RN 12672-29-6), Aroclor 1254 (CAS RN 11097-69-1), and Aroclor 1260 (CAS RN 11096-82-5). The PQL shown is an average value for PCB congeners.

[10] Toxaphene: This entry includes congener chemicals contained in technical toxaphene (CAS RN 8001-35-2), i.e., chlorinated camphene.

[11] Xylene (total): This entry includes o-xylene (CAS RN 96-47-6), m-xylene (CAS RN 108-38-3), p-xylene (CAS RN 106-42-3), and unspecified xylenes (dimethylbenzenes) (CAS RN 1330-20-7). PQLs for method 8021 are 0.2 for o-xylene and 0.1 for m- or p-xylene. The PQL for m-xylene is 2.0 µg/L by method 8020 or 8260.

Appendices to the Preamble

Appendix A—[Reserved]

Appendix B—Supplemental Information for Subpart A—General

Subpart A discusses the purpose, scope, and applicability of part 258 (§ 258.1). It provides definitions necessary for the proper interpretation of the rule (§ 258.2), and indicates that there are other Federal laws and rules with which owners and operators of MSWLFs must comply.

1. Section 258.1 Purpose, Scope, and Applicability

Part 258 sets forth minimum national Criteria for the location, design, operation, cleanup, and closure of municipal solid waste landfills. An MSWLF that does not meet these Criteria will be considered to be engaged in the practice of "open dumping" in violation of section 4005 of RCRA. Moreover, MSWLFs failing to satisfy these Criteria will be deemed to be in violation of sections 309 and 405(e) of the Clean Water Act if they are receiving sewage sludge. The purpose of part 258 is to establish minimum national Criteria for municipal solid waste landfills, including MSWLFs used for sludge disposal. The Criteria do not apply to owners and operators of MSWLFs that have stopped receiving waste as of October 9, 1991 (see § 258.1(c)). Owners and operators of MSWLFs that stop receiving waste between October 9, 1991 and October 9, 1993 are exempt from all of the requirements of part 258 except the final cover requirements cited in § 258.1(d). Finally, MSWLFs that receive waste on or after October 9, 1991 must comply with all of part 258 unless otherwise specifically exempted, e.g., the small communities exemption contained in § 285.1(f).

The effective date of part 258 is October 9, 1993, except for two provisions: (1) The ground-water monitoring provisions of §§ 258.51–258.55, which are phased in for existing MSWLFs and lateral expansions over a five-year period beginning on October 9, 1991, in accordance with § 258.50, and (2) the financial responsibility provisions of subpart G, which are effective April 4, 1994.

The proposed § 258.1 was the subject of extensive and substantive comments. These comments, and EPA's response to the comments, are addressed below.

a. Closed Facilities

The proposal excluded "closed units," from the revised Criteria. "Closed units" were defined as "* * * any solid waste disposal unit that no longer receives solid waste as of the effective date of this part and has received a final layer of cover material." The Agency proposed this approach for several reasons. First, as discussed in the preamble to the proposal, identification of "closed units" would be difficult, time consuming, and complicated by such issues as changes in ownership. Second, the inclusion of inactive facilities would dilute the already scarce technical and financial resources available to the States. Moreover, other authorities and resources are available to address inactive facilities that are creating environmental hazards. For example, abandoned MSWLFs releasing hazardous substances that pose a threat to human health and the environment can be addressed using authorities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Several commenters argued that EPA should distinguish between those facilities that have closed as of promulgation of the revised Criteria and those that continue to receive waste after today's date, but stop doing so prior to the date the rules take effect. These commenters were concerned that some MSWLF owners or operators would take advantage of this window, perpetuating problems that could compromise human health and the environment. Specifically, several commenters urged that liquid restrictions, ground-water monitoring, and final cover requirements should be applicable to facilities that cease receiving waste in the window between the date of promulgation and the effective date. Commenters argued that this approach was more protective of human health and the environment than allowing MSWLFs that close during the window to be exempt from all the revised Criteria.

To address these concerns, EPA is today distinguishing between (1) those facilities that stopped receiving waste prior to the date that the rule is published in the **Federal Register**, and (2) those MSWLFs that stop receiving waste in the window between the date of publication and the rule's effective date. MSWLFs in the first category will remain outside the scope of the revised Criteria. However, EPA is today requiring the second category of MSWLFs to install a final cover as specified under § 258.60(a). The cover must be completely installed within six months of the last receipt of wastes. Owners and operators of MSWLFs that stop receiving waste during the window but that fail to finish cover installation within six months of the last receipt of waste will be subject to all of the requirements of part 258. EPA also eliminated the proposed definition of "closed unit" from the final rule, because the definition was unnecessary given the revised rule language added to respond to comments described. The

Agency believes the regulatory language in today's final rule clearly spells out both the exclusion and the regulatory requirements for facilities that stop receiving waste between the promulgation and effective dates.

EPA decided to distinguish between the two categories of closed facilities for several reasons. EPA never intended to include within the scope of the revised Criteria inactive MSWLFs that stopped receiving waste prior to the date of promulgation of today's rule for the reasons cited previously, and most commenters agreed. On the other hand, the Agency agreed with comments that some regulatory requirements for facilities that stop receiving waste between the date of promulgation and the rule effective date would curtail continued problems. In particular, EPA agreed that, if closed without the benefit of final cover, facilities would continue to be exposed to precipitation, which would result in increased generation of leachate. The cover requirement in today's rule will restrict the introduction of liquids into the landfill, thereby limiting the production of leachate. Today's final cover requirement is consistent with many State programs and, therefore, EPA does not believe that it will cause significant impacts on owners and operators of MSWLFs.

EPA rejected the idea of subjecting these facilities to additional requirements for several reasons. MSWLF owners or operators budget for facility upgrades or closure requirements by setting aside funds during the operating life of the facility. The 18-month time period between the date of publication and the rule effective date is not a sufficient period for many owners or operators to raise the capital necessary to install a ground-water monitoring system. Thus, the "practicable capability" of these owners or operators to install such a system is severely limited. Liquids restrictions requirements would not be necessary after the cover was installed, since there would no longer be any containerized or bulk liquids disposal and the cover would minimize the introduction of precipitation into the landfill.

b. Controls on Municipal Waste Combustion

The proposal extended the applicability of the Part 258 Criteria to landfills that receive municipal waste combustion (MWC) ash regulated under subtitle D (i.e., not otherwise regulated under subtitle C as a hazardous waste). This would include monofills that receive only such MWC ash as well as landfills that co-dispose such MWC ash with regular municipal solid waste. EPA noted, however, that action was pending in Congress on legislation dealing specifically with the management of MWC ash. In addition, EPA asked for comments on the adequacy and appropriateness of the proposed requirements to MWC ash disposal.

On November 15, 1990, the President signed the Clean Air Act Amendments of 1990. Section 306 of the act exempts MWC ash from being regulated as a hazardous waste under subtitle C of RCRA until November 15, 1992. The intent of this provision was to provide time for Congress to clarify the regulatory status of MWC ash during the reauthorization of RCRA. Previously, Congress had considered legislation that, if enacted, would have required special management standards for MWC ash under subtitle D of RCRA. Because this rule is not effective until after November 1992, the applicability of this rule to MWC ash will be affected by Congressional action on this issue and a pending decision on a federal district court appeal regarding the regulatory status of ash.[1] Until November 1992, MWC ash disposal is subject to the existing solid waste disposal criteria under 40 CFR part 257. In addition, some States have regulations governing the disposal of MWC ash.

c. Rule Effective Date

The Agency proposed a uniform 18-month effective date for the revised Criteria, with the exception of the ground-water monitoring requirements, which were to be phased in over a five-year period following a schedule developed by the State and financial assurance. EPA proposed to make all requirements (except ground-water monitoring) effective at the same time to avoid confusion and to simplify implementation. However, EPA specifically solicited comment in the proposal on the merits of phasing in the requirements over time, rather than uniformly. Under that approach, "self-implementing" provisions (e.g., liquids restrictions, hazardous waste screening) could be effective in less than eighteen months, perhaps within six or twelve months, but the remaining requirements would be effective at 18 months.

Many commenters were in agreement with the Agency on the usefulness of the uniform effective date. However, several commenters were concerned that 18 months would be insufficient time for owners or operators to acquire capital necessary to fund changes in facility operation or design, or for States to revise their solid waste management laws and to promulgate their own regulations. In particular, many States commented that EPA should lengthen the uniform effective date of 18 months by a significant time period to reflect the time needed to change State laws, revise State regulations, and have their programs approved by EPA. These commenters suggested alternative dates ranging from 24 to 48 months. However, other commenters supported phasing in some self-implementing Criteria prior to the 18-month date, because it would be more protective of human health and the environment.

EPA still believes that a uniform effective date, except for ground-water monitoring and financial responsibility requirements, is an important aspect of the rule's implementation. However, after closely evaluating the comments received which questioned the wisdom of imposing an 18 month effective date for most provisions of the rule, EPA had decided to extend the effective date by six additional months. As a result, other than for ground-water monitoring and financial assurance requirements, all provisions of the rule will become effective 24 months after the rule is published in the **Federal Register.**

The Agency is adopting a 24 month effective date instead of the 18 month period contained in the proposed rule for two reasons. First, owners and operators and other commenters stated that the 18 month period did not provide sufficient time for facilities to have sufficient capital and resources to comply with the rule requirements. To deal with these concerns, commenters suggested that the rule become effective in anywhere from 24 to 48 months from the date of publication. EPA has decided to provide an additional six months before the rule becomes effective to assure that owners and operators have sufficient time to comply with the extensive requirements contained in the final rule. As explained elsewhere, EPA has also decided that the ground-water monitoring requirements will be phased in over a five year period and that the financial responsibility requirements will become effective in 30 months.

Secondly, while RCRA section 4005(c) requires States to adopt and implement a permit program or other system of prior approval within 18 months after the revised landfill criteria are promulgated, EPA recognizes that even if States are able to meet that statutory deadline the Agency will still need time to evaluate and make a determination

[1] *Environmental Defense Fund, Inc.* v. *City of Chicago* (N.D.Ill. 1989) concluded that MWC ash is exempt from regulation under subtitle C as a hazardous waste if the combustor satisfies the criteria of RCRA section 3001(i). This decision has been appealed.

as to the adequacy of the State permit program in accordance with RCRA section 4005(c)(1)(C). Obtaining EPA's approval of a State permit program is an important element in the implementation of the revised criteria because many of the rule's provisions are tied to whether a State has a permit program which has been approved by the Agency. Six additional months will provide EPA with time that may be necessary to review the adequacy of State permit programs.

EPA next considered whether certain requirements should be effective prior to 24 months or, for ground-water monitoring, on a different schedule from the five year phase-in period. EPA was not persuaded to change the ground-water monitoring effective date because the Agency believes the five-year period is needed to ensure there are sufficient trained personnel and installation equipment available to complete monitoring system installation. EPA's rationale for the five-year phase-in period is described in more detail in appendix F. As a general matter, EPA concluded that applying a significant number of requirements before 24 months would give owners and operators insufficient time to incorporate the requirements into their operations. However, EPA was persuaded by commenters who indicated that facilities that close in the window between the promulgation date and the effective date (i.e., 24 months) should comply with minimum final cover requirements. Therefore, as described earlier in this section, today's rule applies this one requirement to facilities before 24 months.

EPA also evaluated whether other requirements besides ground-water monitoring should be effective later than 24 months. The Agency determined that a later effective date was necessary for the financial responsibility requirements because, as discussed in appendix H, EPA has decided to develop a special financial test for local governments. Therefore, to allow time for this rulemaking, EPA has set an effective date of 30 months for this section of the rule.

2. Section 258.2 Definitions

Major comments on the proposed definitions centered on three terms. The comments, and EPA's response, are highlighted below.

Aquifer. According to the proposed rule, "aquifer" is a geologic formation, group of formations, or portion of a formation capable of yielding significant quantities of ground water to wells or springs. Several commenters suggested that the proposed definition was ambiguous and that "aquifer" should be redefined. Other commenters suggested specific values for the aquifer "yield capability."

After reviewing and evaluating the comments, the Agency has decided to retain the definition of "aquifer" as proposed. EPA believes that the quality and value of the aquifer should be a site-specific determination. The Agency is opposed to judging the resource value of an aquifer based on a generic scale of significance, both in terms of quantity and quality, because of the variability of aquifers on a site-by-site basis. The Agency believes it is more appropriate that such judgments be made on a site-specific basis.

Closed unit. The proposed rule defined "closed unit" as any solid waste disposal unit that no longer receives solid waste as of the effective date of this Part and has received a final layer of cover material. This definition was dropped from the final rule because it was confusing and, as discussed in the section on closed facilities above, because it is now unnecessary given the rule changes to § 258.1.

Existing Unit/Lateral Expansion. The proposal defined "existinq unit" as any solid waste disposal unit that is receiving solid waste as of the effective date of part 258 and has not received a final layer of cover material, and "lateral expansion" as a horizontal expansion of the waste boundaries of an existing landfill unit.

Several commenters requested that the Agency clarify the definitions of "existing unit" and/or "lateral expansion," because as proposed, a clear distinction was not made on the definitive limits or extent of an "existing unit," and how lateral expansions of existing units after the effective date would be regulated. Commenters recommended that the Agency consider the entire permitted landfill area (including those areas currently without waste) to be an "existing unit." Lateral expansion of such units would be only those outside the original permitted area. Alternatively, other commenters supported designating the "existing unit" as the area of landfill space actively receiving waste as of the effective date. Any enlargement of this area would be considered a "lateral expansion" and regulated as a "new unit."

EPA agreed with commenters that as proposed, the definitions were not clear. The Agency considered defining "existing unit" as the entire, originally permitted landfill area (inclusive of areas not yet receiving waste on the effective date). An extension of this "existing unit" beyond the original permitted area would be a "lateral expansion." EPA rejected this approach because of the high degree of variability of permitted landfill areas throughout the country. Some State agencies permit landfills only on a unit-by-unit basis, whereas others permit the entire area expected to receive waste during the landfill life. EPA believed some landfills would have large areas not subject to the revised Criteria, thus significantly reducing the protection of human health and the environment.

The Agency also considered the alternative proposed by commenters, i.e., defining "existing unit" as the landfill area that is receiving waste as of the effective date. This definition is the same as proposed with the exception that the reference to a final cover requirement is deleted. While this alternative was preferable to the proposed definition, the Agency was concerned that owners and operators would spread wastes over large portions of their facility prior to the effective date so that such portions would be deemed "existing units" and not be subject to certain requirements of today's rule. To address this concern, EPA added language specifying that expansions to an "existing unit" would have to be consistent with past operating practices or operating practices modified to ensure good management. The Agency believes this added provision ensures that owners or operators will not prematurely enlarge their facilities to avoid compliance with portions of the revised Criteria, but at the same time, accounts for legitimate landfill enlargements or changes in facility operations resulting from additional waste volumes.

Therefore, in today's rule, the Agency elected to revise the definition of "existing unit" to "* * * mean any solid waste disposal unit that is receiving solid waste as of the effective date of this part. Waste placement in existing units must be consistent with past operating practices or operating practices modified to ensure good management." This approach to revising the definition of "existing unit" did not require that the definition of "lateral expansion" be changed from that contained in the proposal.

3. Section 258.3 Consideration of Other Federal Laws

The Agency received two comments on the proposed § 258.3, which provided that the owner/operator of an MSWLF comply with any other applicable Federal laws, regulations, or requirements. This section recognizes that there are other Federal statutes and

programs that must be considered in siting, designing, and operating MSWLFs and serves as a reminder to the MSWLF owner/operator that such requirements must be met. The preamble to the proposed rule noted a number of applicable Federal statutes, including the Clean Water Act and Clean Air Act.

One commenter suggested that EPA should maintain consistency among the MSWLF requirements and other requirements established under Federal statutes like the Clean Water and Clean Air Acts. This commenter proposed that EPA provide guidance to permit writers and regulators of other Federal programs on the unique nature of MSWLFs. Another commenter expressed concern that § 258.3 implied that the State solid waste agency would be responsible for ensuring compliance of the MSWLF with other Federal requirements. This commenter wanted to make it clear that the MSWLF owner/operator is responsible for compliance with any other Federal requirements and that the State solid waste agency is not the clearinghouse for all these other requirements.

The Agency agrees with the points made by both commenters. EPA has attempted and will continue to attempt to ensure consistency among the requirements in the revised Criteria and other requirements under Federal law to the extent authorized by statute. EPA intends to include information on the applicable requirements under other Federal statutes in the technical guidance that EPA is preparing for this rule. Finally, the owner or operator, not the State, is responsible for ensuring compliance with these other Federal requirements. The State, however, may be involved to the extent these Federal requirements are incorporated and implemented through State regulatory programs.

Appendix C—Supplemental Information for Subpart B—Location Restrictions

The proposed Criteria specified restrictions on siting MSWLF units for six types of locations that the Agency believed warranted control, in order to protect human health and the environment. These six location restrictions have been retained in the final Criteria with some modifications. The six are: MSWLFs in the vicinity of airports and in 100-year floodplains, wetlands, fault areas, seismic impact zones, and unstable areas. Two of these locations, sites near airports and floodplains, are included in the existing part 257 Criteria.

This Appendix summarizes the proposed location restrictions, provides a review of the public comments received, and explains the Agency's approach and rationale for today's final location criteria. The first subsection below discusses and provides the rationale for the differences in the location restrictions for new MSWLF units, existing MSWLF units, and lateral expansions.

Differences in Location Restrictions for Existing Units, New Units, and Lateral Expansions

Several commenters raised concerns as to why the Agency applied certain location restrictions to new MSWLF units and lateral expansions, but not to existing MSWLF units. Specifically, commenters stated that they believed that the proposed location restrictions for wetlands and fault areas should be applicable not only to new units and lateral expansions but also to existing MSWLF units.

Consistent with the proposal, the Agency is subjecting existing units to only three of the location restrictions—airport safety, floodplains, and unstable areas—in today's final rule. Existing units are subject to both the airport safety and floodplains location restrictions because these two criteria are essentially the same as the existing part 257 Criteria, which have been in effect since 1979. Because owners and operators of existing units already should be in compliance with these Criteria, EPA believes that applying these location restrictions should not cause a significant impact on the regulated community or result in a detrimental impact to solid waste disposal capacity, while continuing to provide protection of human health and the environment.

The Agency decided to apply today's final unstable area location restriction to existing units, because the Agency believes that the impacts to human health and the environment that would result from the rapid and catastrophic destruction of these units outweighs any disposal capacity concerns resulting from the closure of existing MSWLF units.

On the other hand, EPA did not impose requirements on existing MSWLF units in wetlands, fault areas, or seismic impact areas. The Agency believes that disposal capacity shortfalls, which could result if existing landfills in these locations were required to close, raise greater environmental and public health concerns than the potential risks caused by existing units in these locations. If existing MSWLF units located in wetlands were required to close, there would be a significant decrease in disposal capacity, as approximately six percent of all existing MSWLF units are located in wetlands. (This estimate was developed by correlating maps of wetland areas with MSWLF locations.) In addition, wetlands are more prevalent in some parts of the country (e.g., Florida and Louisiana). In these States, the closure of all existing units located in wetlands would likely significantly disrupt statewide solid waste management, leading to possible increases in open dumping and open burning. Therefore, the Agency believes that it is impracticable to require closure of existing units located in wetlands.

Concern about impacts on solid waste disposal capacity was also the primary reason the Agency did not subject existing units to today's final fault area location restrictions. The closure of a significant number of existing units located in fault areas would result in the serious reduction of landfill capacity in certain regions of the U.S. where movement along Holocene faults is common, such as along the Gulf Coast and in much of California and the Pacific Northwest. EPA estimates that 35 percent of all existing MSWLF units are in counties that contain faults that have been active in the Holocene Epoch. The Agency, however, does not have specific data showing the distance between these landfills and the active faults, and therefore, is unable to precisely estimate the number of these existing MSWLF units that would not meet today's fault area restrictions. However, given the potential for impacts on solid waste capacity, EPA believes it is appropriate not to subject existing units to the final fault area requirements.

Finally, the Agency today is not imposing the seismic impact zone restrictions of § 258.14 on existing units located in these areas. The Agency anticipated that there would be a significant number of existing MSWLFs in these areas that would be unable to meet the requirements of § 258.14, because retrofitting would be prohibitively expensive and technically very difficult in most cases. As a result, many existing MSWLFs would be forced to close leading to potentially significant impacts on solid waste disposal capacity in these areas.

While the wetlands, fault areas, and seismic impact zone provisions of today's location restrictions do not apply to existing units, all of these restrictions apply to lateral expansions of existing units (as well as new units). Therefore, owners and operators of existing units may vertically expand

their existing units in these locations, but must comply with the provisions governing new units if they wish to laterally expand. EPA recognizes that applying these provisions to lateral expansions (and new units) will somewhat limit the ability of owners and operators to address capacity needs. However, the Agency believes that the flexibility provided owners and operators to vertically expand existing units will adequately address short-term capacity needs. In addition, the 24-month window prior to the effective date of today's rule provides owners and operators time to plan for future capacity needs.

Section 258.29(a) requires the MSWLF owner/operator to record and retain in an operating record any location restriction demonstrations. The final rule allows the Director of an approved State to specify an alternative location for maintaining the operating record and alternative schedules for recordkeeping and notification requirements.

1. Section 258.10 Airport Safety

The proposed criteria specified that new MSWLF units, lateral expansions, and existing MSWLF units located within 10,000 feet (3,048 meters) of any airport runway used by turbojet aircraft or within 5,000 feet (1,524 meters) of any airport runway used by only piston-type aircraft shall not pose a bird hazard to aircraft. These distance limits were derived from the Federal Aviation Administration (FAA) Order 5200.5, "FAA Guidance Concerning Sanitary Landfills on or Near Airports" (October 16, 1974). The proposal was identical to existing § 257.3-8, applicable to solid waste disposal facilities.

In general, commenters supported the proposed airport safety criteria; however, some commenters suggested that the Agency consult with the FAA to establish a coordinated national policy for siting of new MSWLF units near airports. Specifically, commenters were concerned that the FAA had placed additional restrictions on siting near airports that were not reflected in EPA's revised criteria.

In response to these comments, the Agency consulted with the FAA on the latest policies for siting near airports. In January 1990, the FAA revised FAA Order 5200.5, which was the basis for the Agency's existing part 257 criteria and proposed part 258 airport safety provision. Under this revision (FAA order 5200.5A) any waste disposal site located within a five-mile radius of a runway end and that attracts or sustains hazardous bird movements from feeding, water, or roosting areas into, or across the runways and/or approach and departure patterns of aircraft will be considered "incompatible" with airports. Additionally, any operator proposing a new or expanded waste disposal facility within five miles of a runway end should notify the airport and the appropriate FAA airport office so as to provide an opportunity to review and comment on the site in accordance with FAA guidance. If the disposal facility is determined by the FAA to be incompatible with the airport then under the terms of the order, it should not be sited at that location.

To respond to commenters concerns about the need for a coordinated national policy for siting near airports, the Agency carefully considered modifying § 258.10 so as to make it consistent with the FAA Order 5200.5A. However, the Agency recognizes the public has not had full opportunity to review and comment on these potential additional part 258 requirements for airport safety, particularly substantive new performance criteria and restrictions for new MSWLFs and lateral expansions within five miles of airport runways. Therefore, EPA has decided not to include new performance criteria for MSWLFs within five miles of airport runways, in today's rule. Instead EPA expects to propose additional performance criteria or restrictions for new and expanded MSWLFs near airports when the Agency revises these criteria in the future.

However, EPA believes it is appropriate to include in today's rule one minor procedural element of the revised FAA order—that owners and operators proposing new MSWLF or (lateral) expansions within five miles of a runway notify the affected airport and the appropriate FAA office. EPA believes that this requirement will ensure communication between the owner or operator and the FAA, and facilitate implementation of the revised FAA order by the FAA. EPA believes this requirement partially addresses commenters' concerns about a coordinated national policy on siting near airports. More importantly, today's notification requirement imposes little burden on the owner or operator. EPA believes this burden is particularly small when weighed against the FAA concern that landfills and other waste disposal sites erode the safety of the airport environment. Owners and operators can comply with today's notification requirement simply by submitting letters to the affected airport and the appropriate FAA airports office stating their intent to site a new MSWLF or lateral expansions within five miles of an airport runway. And finally, this notification requirement is a type of other applicable Federal requirement with which an owner or operator must comply with under § 258.3 of today's rule.

Today's final airport safety criteria applicable to new MSWLFs, existing MSWLFs, and lateral expansions remain unchanged from the proposal, except for minor clarifying language changes. The Agency also wishes to clarify that today's airport safety criteria do not prohibit the disposal of solid waste within the specified distances, unless the owner or operator is unable to make the required demonstration showing that the landfill is designed and operated so as not to pose a bird hazard. Today's regulation simply defines a "danger zone" within which particular care must be taken to ensure that no bird hazard arises. Also, today's requirement applies only to MSWLFs and does not affect the location of airports or airport runways within the specified distance.

Finally, commenters suggested that the terms "bird hazard" and "airport" be defined in the rule language. In today's final rule, the Agency defines those terms by using the definitions currently found in 40 CFR 257.3-8. The rationale for these definitions, which remains valid for purposes of this rule, can be found at 44 FR 53458, September 13, 1979. The definitions are as follows: "*Airport*" is a public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities." "*Bird hazard*" is "an increase in the likelihood of bird/aircraft collisions that may cause damage to the aircraft or injury to its occupants."

2. Section 258.11 Floodplains

The proposed criteria specified that new MSWLF units, lateral expansions, and existing MSWLF units located in 100-year floodplains shall not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in the washout of solid waste so as to pose a hazard to human health and the environment. The proposed requirement was identical to the existing part 257 Criteria, which are applicable to all solid waste disposal facilities, including MSWLFs.

The intent of this requirement is to ensure that MSWLFs located in a 100-year floodplains are designed and operated to prevent significant impacts on the 100-year flood flow and water storage capacity. Specifically, disposal of solid waste in floodplains may have the following kinds of significant adverse impacts: (1) If not adequately protected from washout, wastes may be carried by flood waters and flow from

the site, affecting downstream water quality; (2) filling in the floodplains may restrict the flow of flood waters, causing greater flooding upstream; and (3) filling in the floodplain may reduce the size and effectiveness of the temporary water storage capacity of the floodplain, which may cause a more rapid movement of flood waters downstream, resulting in higher flood levels and greater flood damage downstream.

Several commenters noted that the proposed rule and preamble were inconsistent. Specifically, the rule language specified that the MSWLF must not restrict the flow of the 100-year flood or reduce the temporary water storage capacity of the floodplain or result in washout of solid waste so as to pose a hazard to human health and the environment. However, the preamble stated that locating a MSWLF in a floodplain will always have some impact on the flow of the 100-year flood and water storage capacity. The Agency agrees that an MSWLF will always have some impact upon the flow and water storage capacity of the 100-year flood and a requirement that an MSWLF not do so is impracticable. As proposed, the Agency is requiring that the flow restriction or impact upon water storage capacity that does occur, as the result of the MSWLF, not pose a hazard to human health and the environment.

Several other commenters disagreed with the proposed requirement and strongly urged EPA to ban all MSWLF units from the 100-year floodplain. These commenters argued that it is difficult to predict in advance the adverse impacts of a flood and asserted that, in the event of a flood, remediation would likely involve further environmental threats and would be extremely costly, if even possible. Those commenters also suggested that if the Agency still decides not to ban MSWLFs from the 100-year floodplain, EPA should at least ban MSWLFs in areas subject to frequent flooding (e.g., five- or ten-year floodplains).

The Agency decided not to ban the siting of new MSWLF units, lateral expansions, or existing MSWLF units in the 100-year floodplain for two reasons. First, EPA believes that such an across-the-board ban is not necessary for MSWLFs to protect human health and the environment. EPA believes that the demonstration requirement in today's final rule fully addresses the human health and environmental concerns (i.e., restricting flow, reducing temporary water storage capacity, and washout of waste) posed by the siting of MSWLFs in floodplain areas. If such a demonstration cannot be made, the landfill cannot be sited in that location or must be closed in accordance with § 258.16 of this part. Although EPA agrees with commenters that it is somewhat difficult to predict in advance the adverse impacts of a flood, the Agency believes such predictions can be made. In fact, such demonstrations have been made in the past by facility owners and operators to comply with identical floodplain restrictions for solid waste disposal facilities under part 257, which have been in existence since 1979.

Second, as stated previously in the preamble to the proposed rule, the outright banning of all MSWLFs from the 100-year floodplain could affect large portions of the nation, including large areas of some States (e.g., Louisiana, Mississippi, Missouri, and Arkansas) and, thus, could strain the regulated community's ability to provide adequate disposal capacity for municipal solid waste in those areas.

Owners or operators of MSWLFs can determine if their facilities are located in a 100-year floodplain by using the Federal Emergency Management Agency (FEMA) flood insurance rate maps (FIRMs). These maps cover over 99 percent of the flood-prone communities in the United States and can be obtained at no cost from the FEMA Flood Map Distribution Center, 6930 (A–F) San Tomas Road, Baltimore, Maryland, 21227–6227. For the small number of areas that are not covered by FIRMs, owners or operators could obtain 100-year floodplain maps from: The U.S. Army Corps of Engineers, the Soil Conservation Service, the National Oceanic and Atmospheric Administration, the U.S. Geological Survey, the Bureau of Land Management, the Bureau of Reclamation, the Tennessee Valley Authority, and State and local flood control agencies and other departments. Additional guidance on procedures for delineating floodplains where no maps exist will be included in the technical guidance for this rule, which is discussed in section V of today's preamble.

The Agency also decided not to ban the siting of all MSWLF units in areas of more frequent flooding (e.g., five- or ten-year floodplains). Under the 100-year floodplain criterion, an MSWLF unit cannot be located in the 100-year floodplain unless the MSWLF unit is designed, constructed, and maintained so as not to restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste. The main difference between the five- or ten-year floods and the 100-year flood is the magnitude of the flood and, therefore, any structures built for a 100-year flood should be able to withstand the five- or ten-year flood. Furthermore, the 100-year floodplain encompasses, geographically, all five- and ten-year floodplains. Thus, the Agency believes that today's requirement adequately protects human health and the environment in 100-year floodplains as well as in five- and ten-year floodplains.

Finally, the Agency believes that a ban on MSWLF units in areas of frequent flooding would be more difficult to implement because maps depicting the five- or ten-year floodplains (frequent flooding areas) are not readily available and in most areas are not available at all. A requirement banning the location of MSWLFs from areas of frequent flooding areas would require owners or operators to develop floodplain maps for frequent-flooding areas. On the other hand, maps depicting the 100-year floodplain are generally readily available.

3. Section 258.12 Wetlands

The proposed criteria specified that no new MSWLF unit or lateral expansion could be located in a wetland unless the owner or operator made specific demonstrations to the State that the new unit (1) would not result in "significant degradation" of the wetland as defined in the Clean Water Act section 404(b)(1) guidelines, published at 40 CFR part 230, and (2) would meet other requirements derived from the section 404(b)(1) guidelines. Under the proposal, existing MSWLF units located in wetlands could continue to operate; however, as indicated above, any lateral expansions of existing units would have to be in compliance with the proposed wetland restrictions.

To be consistent with the Clean Water Act, the proposed criteria adopted the definition of wetlands contained in the Army Corps of Engineers section 404 implementing regulations (33 CFR parts 320 through 330) and the EPA section 404(b)(l) guidelines (40 CFR part 230). As defined by the Corps and EPA, wetlands are those "areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include, but are not limited to, swamps, marshes, bogs, and similar areas."

Several commenters requested that new MSWLF units be banned completely from wetlands. A few commenters suggested that when a new

MSWLF unit is located in a wetland, the owner or operator of the MSWLF should be required to restore an equivalent amount of land as a wetland "offset." On the other hand, several commenters supported the proposed approach or one with more flexibility to allow siting of critically-needed landfills in wetlands under certain conditions.

In response to these comments, the Agency considered whether to establish an outright ban on new MSWLF units and lateral expansions in wetlands. The Agency fully agrees with the commenters that wetlands are a very important, fragile ecosystem that must be protected. In fact, the Agency has identified wetlands protection as a top priority. In evaluating this issue for today's final rule, however, EPA also seriously considered commenters' request for flexibility to allow limited siting of landfills in wetlands to address potential impacts on current and future solid waste disposal capacity. As discussed earlier in this section, wetlands comprise large areas of the country, particularly in certain regions of the U.S. Because large volumes of municipal waste are generated in every community throughout the U.S., there is a critical need for regional or local waste management capacity. EPA was concerned that an outright ban of new MSWLFs or lateral expansions in wetlands would severely restrict the available sites or expansion possibilities. Such capacity shortfalls very likely could lead to other health and environmental impacts, such as open dumping or open burning. Because of the potential for serious disruption of municipal solid waste capacity, the Agency concluded that some flexibility must be provided for communities to site or laterally expand MSWLFs in wetlands. Therefore, the Agency decided against an outright ban on new MSWLFs or lateral expansions in wetlands.

However, EPA continues to believe that siting new MSWLFs or lateral expansions in wetlands should be done only under very limited conditions. The Agency is retaining in today's rule the comprehensive set of demonstration requirements included in the proposed rule. In addition, the Agency agrees with commenters that when a new MSWLF is located or a lateral expansion is created in a wetland, that the owner or operator should offset any impacts through appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands). This approach is consistent with the Agency's recent adoption of the goal of achieving no overall net loss of the nation's remaining wetland base, as defined by acreage and function. Therefore, the Agency has incorporated this additional demonstration element into the final rule. Specifically, § 258.12(a)(4) has been modified to require owners or operators of new MSWLF units or lateral expansions to demonstrate that steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands and then minimizing such impacts to the maximum extent practicable, and finally, offsetting any remaining wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of man-made wetlands).

The Agency has also made additional changes to ensure that the demonstrations required today for new MSWLFs and lateral expansions are comprehensive and ensure protection of human health and the environment. First, EPA has added language to § 258.12(a)(2) clarifying that the owner or operator must demonstrate that both the construction and operation of the MSWLF will not result in violations of the standards specified in § 258.12(a)(2)(i)-(iv).

Second, as requested by commenters, the Agency has revised § 258.12(a)(3) to identify the factors the owner or operator must address in demonstrating that the landfill will not cause or contribute to significant degradation of wetlands. These factors, which were partially derived from the section 404(b)(1) guidelines, address the integrity of the MSWLF and its ability to protect the ecological resources of the wetland.

Finally, because of the unique characteristics of wetlands, EPA believes that the review and approval of the Director of an approved State is necessary for ensuring that the demonstration is comprehensive and adequate to protect human health and the environment. Therefore, today's rule specifies that all of the demonstrations must be made to the Director of an approved State and placed in the operating record of the facility. This provision effectively bans the siting of new MSWLFs or lateral expansions in wetlands in unapproved States (i.e., States that do not have EPA-approved RCRA subtitle D permitting programs). EPA believes this approach, is warranted given the commenters' concerns regarding wetlands and the Agency's commitment to protecting this valuable resource.

As indicated earlier in today's preamble, the Administration announced on August 9, 1991 a comprehensive plan for the protection of the Nation's wetlands. Included were a number of actions to improve the workability of the Clean Water Act section 404 regulatory program, which regulates the discharge of dredged or fill material into wetlands. Among these changes will be the development of wetlands categories by an interagency technical committee based on wetlands value. After such a categorization scheme is developed, the mitigation sequence (i.e., avoidance, minimization, and then compensation) will be retained for the high value wetlands category, and projects in other wetland categories will be required to offset wetlands losses through compensatory mitigation. When such wetlands categories are identified, the above changes to the section 404 permitting program will be implemented through amendment of applicable legal authorities. Section 258.12 of today's rule is consistent with regulatory provisions currently governing the section 404 program. When the section 404 regulatory program is modified in accordance with the Administration's wetlands protection program, relevant portions of this rule will be modified accordingly.

Furthermore, four agencies have recently published proposed revisions to a technical guidance document implementing the current regulatory definition of wetlands, and the agencies will shortly be proposing to codify portions of that document in the Code of Federal Regulations. See 56 FR 40446 (Aug. 14, 1991). The definition of wetlands contained in § 258.12 of today's rule reflects the Agency's current definition under the section 404 program. *See* 40 CFR 232.2(r). When the agency proposes amendments to the definition of wetlands under the section 404 program, such changes will also be proposed for the definition contained in § 258.12 of today's rule.

4. Section 258.13 Fault Areas

EPA proposed to ban new MSWLF units and lateral expansions within 200 feet (60 meters) of faults that have experienced displacement during the Holocene Epoch. The Holocene is a unit of geologic time, extending from the end of the Pleistocene Epoch to the present and includes the past 11,000 years of the Earth's history. The technical justification for the 200-foot (60-meter) setback is discussed in the preamble for

the proposed rule and the Draft Location Restriction Background Document.

In the proposed rule, a "fault" was defined as a fracture along which strata on one side have been displaced with respect to that on the other side. In response to comments, EPA revised the definition of fault in today's rule to include a zone or zones of rock fracturing in any geologic material along which there has been an observable amount of displacement of the sides relative to each other. This addition is necessary because faulting does not always occur along a single plane of movement (a "fault"), but rather along a zone of movement (a "fault zone"). Therefore, "zone of fracturing," which means a fault zone in the context of the definition, is included as part of the definition of fault, and thus the 200-foot setback distance will apply to the outermost boundary of a fault or fault zone.

Several commenters suggested alternatives to the proposed 200-foot setback distance. Although no commenters suggested actual values for these changes or provided any data, two favored an increased distance, one favored a decreased distance, and two favored a distance based on site-specific studies.

Seismologists generally believe that the structural integrity of MSWLFs cannot be unconditionally guaranteed when they are built within 200-feet of a fault along which movement is highly likely to occur. Moreover, EPA relied on a study that showed that damage to engineered structures from earthquakes is most severe when the structures were located within 200-feet of the fault along which displacement occurred. In general, EPA believes that the 200–foot buffer zone is necessary to protect engineered structures from seismic damages.

However, the Agency also agrees with commenters who argued that the 200–foot setback may be overly protective in some geologic formations but it is unable to provide a clear definition of these geologic formations. Therefore, the Agency has allowed in today's rule, the opportunity for an owner or operator of a new MSWLF unit or lateral expansion to demonstrate to the Director of an approved State that an alternative setback distance of less than 200 feet will prevent damage to the structural integrity of the MSWLF and will be protective of human health and the environment. Section 258.29 of today's rule also specifies that the demonstration must be placed in the operating record of the facility. This approach requiring review and approval of the Director of an approved State is consistent with other sections of today's rule for variances or waivers from the specified self-implementing requirement.

EPA recommends that owners or operators use a map published by the U.S. Geological Survey in 1978 to determine the location of Holocene faults in the United States. For locations in which movement along a Holocene fault has occurred more recently than 1978, owners or operators of new MSWLFs and lateral expansions would need to perform a geologic reconnaissance of the site and its environs to map fault traces and to determine the faults along which movement has occurred in Holocene time, and then to determine the appropriate 200-foot setback zone(s).

5. Section 258.14 Seismic Impact Zones

The proposed criteria required owners or operators of new MSWLF units or lateral expansions located in a seismic impact zone to design the unit to resist the maximum horizontal acceleration in lithified material for the site. The design features affected include all containment structures (i.e., liners, leachate collection systems, and surface water control systems). Seismic impact zones were defined in the proposal as areas having a 10-percent or greater probability that the maximum expected horizontal acceleration in hard rock, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in 250 years.

Several commenters suggested that the requirement for seismic impact areas be revised so that the maximum expected horizontal acceleration is based on site-specific assessments rather than on one performance criterion (exceedance of 0.10g in 250 years) for all sites. Some commenters supported the proposed criterion, while others favored the use of a 100-year return period rather than a 250-year period. These commenters believe that using a 250-year return period to evaluate site peak ground motion would result in more expensive studies and design in these areas, when the 100-year return period provides adequate protection to human health and the environment.

EPA has rejected the commenters' suggestion to allow the maximum expected horizontal acceleration to be set on a site-specific basis. Because of the self-implementing nature of today's rule, EPA believes that to ensure adequate protection of human health and the environment it is essential to establish a standard performance criterion for horizontal acceleration. Today's final standard still provides owners and operators of new MSWLF units and lateral expansions significant flexibility in selecting appropriate facility design on a site-specific basis to meet the specified performance criterion.

EPA also decided to retain the proposed criterion using the 250-year return period rather than changing to a 100-year period as some commenters suggested, for two reasons. First, commenters did not present any data demonstrating that the 100-year return period was as protective of human health and the environment. In lieu of supporting data, EPA is hesitant to adopt what it considers to be a less protective standard. Defining seismic zones by using the 250-year interval includes more area within the zone than a 100-year and, therefore, will be more protective of human health and the environment. Second, as a practical matter, 100-year interval maps are not available for most areas in the U.S. This would require owners or operators to do possibly costly studies to identify these areas if today's rule used the 100–year interval. The maps for the 250-year intervals, on the other hand, are readily available for all of the U.S. in the U.S. Geological Survey Open-File Report 82–1033, entitled "Probabilistic Estimates of Maximum Acceleration and Velocity in Rock in the Contiguous United States."

Several commenters noted that EPA used the terms "lithified material" and "hard rock" interchangeably in the proposed rule. Commenters requested that these terms be defined or clarified. EPA agrees that these terms were used interchangeably, and that this results in confusion. Because the term "hard rock" can be ambiguous—raising questions such as what is "hard" rock as opposed to "soft" rock—the Agency revised the rule language to use the term "lithified earth material" consistently throughout the rule. This term best defines the material the Agency is addressing in this part of the rule. The term "lithified earth material" includes all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. The term specifically excludes man-made materials such as fill, concrete, and asphalt, as well as unconsolidated earth materials, soils, or regolith lying at or near the earth's surface.

Like all of today's final rule, the final seismic impact zone requirements are self-implementing. As such, today's final rule requires the owner or operator to place the specified demonstration in the operating record and to notify the State Director. This provision ensures that the owner or operator retains the

documentation necessary to show that a demonstration has been made in compliance with this requirement.

6. Section 258.15 Unstable Areas

The proposed criteria required owners and operators of new MSWLF units, lateral expansions, and existing MSWLF units located in unstable areas to demonstrate to the State's satisfaction the structural stability of the unit. Such demonstrations would have to show that engineering measures have been incorporated into the design of the unit to mitigate the potential adverse impacts of establishing events on the structural components of the unit. These structural components include liners, leachate collection systems, final cover systems, run-on and run-off control systems, and any other component necessary for protection of human health and the environment.

The proposed criteria also required a 6½ year phase-out of existing MSWLF units located in unstable areas that could not make the demonstration. This was corrected in the final rule to make the closure deadline five years from today's date, as originally intended. However, States could grant an extension to the phase-out if there were no available disposal alternative and no potential threat were posed to human health and the environment. (See appendix B for discussion on closure of existing units).

Several commenters requested that the Agency clarify its definition of "unstable areas." Today's final rule provides that "unstable areas" are locations that are susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas are characterized by localized or regional ground subsidence, settling (either slowly, or very rapidly and catastrophically) of overburden, or by slope failure. Unstable areas generally include:

(1) Poor foundation conditions—areas where features exist that may result in inadequate foundation support for the structural components of the MSWLF unit (this includes weak and unstable soils);

(2) Areas susceptible to mass movement—areas where the downslope movement of soil and rock (either alone or mixed with water) occurs under the influence of gravity; and

(3) Karst terraces—areas that are underlain by soluble bedrock, generally limestone or dolomite, and may contain extensive subterranean drainage systems and relatively large subsurface voids whose presence can lead to the rapid development of sinkholes.

The term "karst" refers to a type of topography that under certain climatic conditions develops on soluble rock, most commonly limestone or dolomite. Karst areas are characterized by the presence of certain physiographic features such as sinkholes, sinkhole plains, blind valleys, solution valleys, losing streams, caves, and big springs, although not all these features are always present. EPA's intent is to include as an unstable area only those karst terraces in which rapid subsidence and sinkhole development have been a common occurrence in recent geologic time. Many of the karst areas are shown on the U.S. Geological Survey's National Atlas map entitled "Engineering Aspects of Karst," published in 1984. This is a very small scale map, and even though a review of that map suggests that a site is not in an area with historical subsidence problems, owners and operators should undertake a more site-specific investigation to show that the potential for subsidence at their site is very limited or nonexistent. Guidance on this issue will be included in the technical guidance document for this rule the Agency plans to issue within six months.

Specific examples of natural or human-induced phenomena include: Debris flows resulting from heavy rainfall in a small watershed; the rapid formation of a sinkhole as a result of excessive local or regional ground-water withdrawal; rockfalls along a cliff face caused by vibrations set up by the detonation of explosives, sonic booms, or other mechanisms; or the sudden liquefaction of a soil with the attendant loss of shear strength following an extended period of constant wetting and drying. Various naturally-occurring conditions can make an area unstable and these can be very unpredictable and destructive, especially if amplified by human-induced changes to the environment. Such conditions can include the presence of weak soils, oversteepened slopes, large subsurface voids, or simply the presence of large quantities of unconsolidated material near a watercourse.

The preamble to the proposed rule specified "weak and unstable soils" as an example of an unstable area. Several commenters requested that EPA clarify its definition of "weak and unstable soils," with some suggesting that engineering criteria be substituted. Based on comments received, EPA is clarifying the definition of "weak and unstable soils" in this appendix. Weak and unstable soils are of two basic types: (1) Expandable soils and rocks sensitive to water, and (2) soils and rocks subject to rapid settlement when saturated. Naturally-occurring expandable materials include smectitic clays, anhydrous sodium sulfate, and some shales. Loess, which is a primarily silt-sized material, is the principal material subject to rapid settlement upon saturation. Liquefaction and the subsequent sudden loss of bearing strength is a major problem with many of these materials, and if any of the above materials are present at a proposed MSWLF site, detailed geotechnical and geological studies should be undertaken to examine and document the performance of the soil under all likely climatic and technical settings. This is to ensure that poor foundation conditions are not now present, and that they are not likely to occur in the future under changes in climatic and other conditions that may reasonably be expected to occur. As an example, the bearing strength of soils at a site where there are seasonal cycles of wetting and drying should be documented under both conditions. Guidance on this issue will be included in the technical guidance EPA is developing for this rule.

One commenter argued that all MSWLFs should be banned in karst terraces instead of allowing a demonstration of structural stability because such areas are commonly prone to catastrophic subsidence. The commenter further argued that it is extremely difficult to show that ground-water monitoring and corrective action can be effectively performed in many, if not most, karst terraces, particularly those where ground water moves along large, discrete conduits.

The Agency recognizes that rapid sinkhole formation that occurs in some karst terraces can pose a serious threat to human health and the environment by damaging the structural integrity of liners, caps, run-on/run-off control systems, and other engineered structures. However, EPA did not propose an outright ban of MSWLF units in all karst terraces because of concerns regarding the impacts of such a ban on solid waste disposal capacity in certain regions of the country. For example, several States (i.e., Kentucky, Tennessee) are comprised mostly of karst terraces and the banning of all MSWLF units in karst terraces would cause severe statewide disruptions in capacity available for solid waste management. Moreover, the Agency believes that some karst terraces may provide sufficient structural support for MSWLFs and the final rule should provide flexibility for siting in these areas. Therefore, today's rule allows the construction of new MSWLF units or

lateral expansions and the continued operation of existing MSWLF units in karst terraces where the owner or operator demonstrates to the State Director the structural integrity of the components of the unit as allowed for in § 258.15(a). The Agency believes this approach will provide adequate protection of human health and the environment for subtitle D units.

Although the standards set forth in this section pertain to the issue of structural integrity of MSWLF units in karst terraces, EPA acknowledges that there are additional problems in establishing an effective ground water monitoring system in some karst terraces. EPA believes that the ground water monitoring requirements under subpart E of today's rule adequately address the establishment of a ground water monitoring system at all MSWLF units for subtitle D purposes, including those located in karst terraces. New units and lateral expansions in karst terraces that are not able to demonstrate compliance with subpart E are not allowed to begin operations, even if compliance with § 258.15(a) can be demonstrated. Similarly, existing units that are not able to demonstrate compliance with subpart E, even if compliance with § 258.15(a) can be demonstrated, are required to close in accordance with § 258.16. This will provide additional protection of human health and the environment.

Today's final unstable area restrictions incorporate an editorial change suggested by a commenter. This commenter indicated that the language in one sentence of § 258.15(a) as proposed was confusing (i.e., "The owner or operator of an MSWLF unit located in an unstable area must demonstrate to the State that engineering measures have been incorporated into the unit's design to ensure the stability of the structural components of the unit.") The commenter suggested that the language be revised as follows (changes underlined): "* * * have been incorporated into the unit's design to ensure *that the integrity* of the structural components of the unit *will not be disrupted.*" The Agency agrees with this editorial comment and revised the final rule language as suggested.

Like all of today's final rule, the final unstable area restrictions are self-implementing. As such, today's final unstable area restrictions require the owner or operator to place the specified demonstrations in the operating record and to notify the State Director. This provision ensures that the owner or operator retains the documentation necessary to show that a demonstration has been made in compliance with this requirement.

7. Section 258.16 Closure of Existing Units

The proposed rule, under § 258.15, required owners and operators of existing MSWLF units that were located in unstable areas and unable to demonstrate the structural integrity of the unit, to close within 6½ years (October 9, 1996) unless the State extended the deadline. Extensions could only be granted by the State after considering the availability of alternative waste disposal capacity and the potential risk to human health and the environment.

As discussed earlier, § 258.15(c) erroneously stated that existing units in unstable areas that are unable to make the demonstration, must close within 5 years of the effective date of the rule. As this is read, it allows 6½ years for MSWLFs to close. The Agency has corrected this in today's final rule to reflect its original intention to allow a maximum of 5 years from today's date for MSWLF's unable to make the appropriate demonstrations, to close.

Several commenters expressed concern that States could extend this phase-out period for existing units beyond the intended five years with no limitations. EPA agrees with the commenters that there should be a limit on the time period for extensions. Therefore, in today's rule, EPA is limiting the length of an extension that the Director of an approved States may grant to two years after the initial five-year extension. EPA believes that five years will, in most cases, be adequate time to complete proper and effective facility closure in unstable areas, and to arrange for alternative waste management. However, there may be cases where alternative waste management capacity may not be readily available or where the siting and construction of a new facility may take longer than five years. EPA believes the two-year extension provides sufficient time to address these potential problems. EPA continues to believe that impacts on human health and the environment need to be carefully considered before such extensions are granted. For this reason, the final rule retains the provision that an extension be given only after consideration of threats to human health and the environment. Specifically, today's final rule requires the owner or operator to demonstrate that there is no available alternative disposal capacity and there is no potential threat to human health and the environment.

To further ensure careful consideration and review of human health and environmental impacts, time extensions must be approved by the Director of an approved State. Therefore, these extensions will not be available to owners and operators of MSWLFs in unapproved States.

In reviewing comments on the proposal, the Agency recognized that the proposed rule was unclear regarding closure of existing MSWLF units that could not make the demonstrations under the airport safety and floodplains location criteria. Therefore, to clarify this issue, EPA has specified under this new section (258.16) that existing MSWLF units that cannot meet the demonstration requirements under the airport safety or floodplain location restrictions must also close under the same schedule discussed above for the unstable area restrictions. As discussed earlier in this preamble, EPA expects that most, if not all, existing MSWLFs should be in compliance with the airport safety and floodplain provisions because they have been in effect under existing part 257 since 1979. Thus, the Agency does not expect many existing units in these two locations to close. Nonetheless, closure of existing units that cannot make the demonstrations required in today's rule was the original intent of the Agency. This section now explicitly provides for closure of existing units where required and clarifies the Agency's original intent on this matter.

8. Other Location Areas

EPA specifically requested comments on whether other location restrictions in addition to those proposed should be imposed for MSWLFs. The Agency received several suggestions for additional location restrictions. The major suggestions included areas of high-quality, vulnerable ground water and unmonitorable areas. However, the Agency decided not to include them in today's final rulemaking for the reasons discussed below.

The Agency recognizes the concern with siting MSWLF units over areas of high-quality, vulnerable ground water. EPA agrees that high-quality, vulnerable ground water should be protected. However, as noted earlier, this rule is intended to be self-implementing. As yet, the Agency does not have adequate information to develop acceptable national and self-implementing criteria to identify high-quality, vulnerable ground water. The Agency is still examining this issue and developing those types of criteria for determining areas of high-quality, vulnerable ground

water. Such specific criteria are critical for an effective, implementable siting requirement. Therefore, restrictions on siting MSWLF units over areas of high-quality, vulnerable ground water are not included in today's final rule. If EPA decides to establish a new siting restriction for MSWLFs in these areas after this analysis is completed, the Agency will propose appropriate revisions to this rule. Before this time, the Agency expects that the multitude of State ground-water protection laws, including those affecting siting, will be used to protect high-quality, vulnerable ground water as an interim measure. The Agency also intends to study further the efficacy of these State measures in developing the national self-implementing criteria that may be needed.

Several commenters suggested that MSWLFs should be banned from locating in unmonitorable areas and that these areas should be included as a location restriction. The Agency agrees with these commenters, but believes that this issue is adequately addressed by the ground-water monitoring requirements under subpart E of today's rule. Specifically, § 258.50 of subpart E requires new MSWLF units to be in compliance with the ground-water monitoring requirements prior to waste being placed in the unit for disposal, and existing units to establish ground-water monitoring requirements according to a specified schedule (see appendix F to today's preamble). In addition, § 258.51 requires that the number, spacing, and depths of monitoring systems be determined based on a thorough site-specific characterization of the aquifer and geologic units or materials overlying the aquifer. If an owner and operator is unable to comply with these requirements due to unmonitorability of a particular location, he/she cannot site or operate an MSWLF at that location. EPA believes that this approach effectively meets the objective of the commenters.

9. Wellhead Protection

As part of today's rulemaking, the Agency is emphasizing the State wellhead protection program established under Section 1428 of the Safe Drinking Water Act. By including a note to today's location restrictions this puts owners and operators on notice that wellhead protection programs may exist in their States and the appropriate State program should be contacted to determine the nature of any additional requirements. The wellhead protection program is not a part of the subtitle D rule and the Agency is not implying a direct connection between the two rules by incorporating the note in today's rule.

Appendix D—Supplemental Information for Subpart C—Operating Criteria

1. Section 258.20 Procedures for Excluding the Receipt of Hazardous Waste

The proposed rule would require the owner or operator of an MSWLF to implement a program to detect and prevent attempts to dispose of hazardous wastes (regulated under subtitle C of RCRA) and polychlorinated biphenyl (PCB) wastes (regulated under the Toxic Substances Control Act) at the facility. The program, as proposed, included random inspections of incoming loads, inspections of suspicious loads, recordkeeping of inspection results, training of personnel to recognize hazardous waste, and procedures for notifying the proper State authorities if a regulated hazardous waste was found at the facility.

Commenters expressed concern that some proposed program elements might be impracticable and/or dangerous, especially for smaller landfills and sites that are unattended during open hours. EPA recognizes the potential hazards involved, but believes that with proper training (as required under today's rule) these risks should be minimized. In addition, a program for detection and removal of hazardous materials would reduce inadvertent contact with hazardous materials by other employees of the facility and would discourage attempts to dump regulated hazardous waste illegally at MSWLFs. EPA believes that, although the proposed program elements are not currently standard procedures, the elements are generally feasible at most MSWLFs, are highly protective of human health and the environment, and after implementation should involve only slightly more additional work for the owner or operator.

However, the Agency recognizes that at certain facilities, particularly smaller facilities, which may be unmanned during all or portions of the time the waste is received, certain program elements, specifically routine inspections of incoming loads, may be impractical. The Agency also recognizes that random inspections may be unnecessary if the waste exclusively originates from households. In order to accommodate these concerns, the Agency revised the proposed language, by providing that the owner or operator of an MSWLF can avoid random inspections of incoming loads if other steps are instituted to ensure that such loads do not contain regulated hazardous wastes. These steps may include instituting source controls, including restricting the type of waste received to household waste. Under such conditions, the owner or operator has eliminated the key potential sources of regulated hazardous waste (i.e., commercial and industrial waste generators).

Commenters were also concerned about the difficulty in determining what constitutes a "suspicious" load. The Agency's intent was to target those incoming loads that have characteristics suggesting the presence of hazardous waste or PCB wastes. However, the Agency agrees with the commenters that the term "suspicious" is vague and difficult to define. The requirement for inspections of suspicious loads, therefore, was deleted from the final rule. EPA believes, however, that today's final requirements discussed below regarding random inspections or other steps ensuring that incoming loads do not contain hazardous waste or PCB wastes will achieve the Agency's goal of targeting incoming loads that raise concerns.

The final rule requires the implementation of a program at the facility for detecting and preventing the disposal of regulated hazardous wastes and PCB wastes. This program must include: (1) Random inspections of incoming loads unless other steps are instituted to ensure that incoming loads do not contain regulated hazardous waste or PCB wastes; (2) records of any inspections; (3) training of facility personnel to recognize regulated hazardous waste and PCB wastes; and (4) procedures for notifying authorized States under Subtitle C of RCRA or the EPA Regional Administrator if a regulated hazardous waste or PCB waste is discovered at the facility.

Commenters requested that EPA define what constitutes an inspection and what is meant by a random inspection. These issues are discussed below.

Under today's rule, an inspection would involve discharging a waste load and viewing the contents prior to actual disposal of the waste at the facility, allowing the facility owner or operator to refuse to dispose of wastes deemed inappropriate. Inspections could be performed near or adjacent to the working face of the landfill. Alternatively, inspections could be performed on a tipping floor located near the facility scale house or inside the site entrance. Inspections could also be performed at the tipping floor of transfer stations, prior to the transfer of the waste to the facility. An inspection

at a transfer station could operate in lieu of a random inspection of incoming loads at the MSWLF. Inspections should be performed by facility personnel trained to recognize regulated hazardous waste or PCB wastes.

For an inspection to be adequate, the inspector should know the nature of all materials received in the load and whether or not they are regulated hazardous waste or PCB wastes. Because it is not practicable to inspect every load, random inspections are required (unless other steps or procedures are taken to ensure that incoming loads do not contain regulated hazardous waste or PCB wastes). Waste brought to the facility in containers used for hazardous materials, in containers not ordinarily used for the disposal of household wastes (e.g., in 55-gallon drums), or in unmarked containers may warrant inspections. Loads may also warrant inspections if brought to the facility in vehicles not typically used for disposal of municipal solid waste or if transported by haulers who usually transport hazardous waste. For wastes of unknown nature received from sources other than households (e.g., industrial or commercial establishments), the inspector should question the transporter about the composition of materials brought to the facility for disposal.

Commenters also requested that the Agency clarify what frequency constituted "random" inspections. Today's final rule does not specify a minimum frequency because EPA believes the appropriate frequency for inspections will vary significantly based on site-specific factors. Such factors include the owner or operator's knowledge of the waste generator and hauler and the type of waste received. For example, wastes received from a waste generator that the owner or operator has little prior experience with may require more frequent inspections. Likewise, wastes from commercial or industrial sources may require more frequent inspections than wastes predominantly from households. The owner or operator should consider these factors, as well as others applicable to his or her facility, in developing an appropriate inspection program. EPA plans to provide additional guidance on this issue in the technical guidance on this rule described in section VI of today's preamble.

Owners and operators of MSWLFs must ensure that all relevant personnel are trained to identify potential regulated hazardous waste and PCB wastes. Relevant personnel may include supervisors, spotters, designated inspectors, equipment operators, and weigh station attendants. The training should emphasize methods to identify containers and labels typical of hazardous waste and PCB waste. Training should also address the proper handling of hazardous waste. Some of this information is provided in courses currently offered to comply with the Occupational Safety and Health Act (OSHA), under 29 CFR 1910.120.

Section 258.20 of today's rule requires records of all inspections. Under § 258.29 of today's rule, these records must be included and maintained in the operating record. Inspection records should include the date and time wastes were received during inspection, names of the hauling firm and driver, source of the wastes, vehicle identification numbers, and all observations made by the inspector. The final rule, however, does provide flexibility to Directors of Approved States, to establish alternative recordkeeping locations and alternative schedules for recordkeeping and notification requirements.

Numerous commenters asked what should be done with hazardous waste left at the gate or inadvertently accepted at the MSWLF. This includes: What an owner or operator should do if hazardous material is discovered; who is responsible for removal of the waste; and, should testing be necessary to determine whether or not a material is hazardous, who is responsible for storing the material during testing and what storage protocols apply.

Under today's rule, owners and operators must develop procedures to notify the proper authorities if a regulated hazardous waste is discovered at the facility, as discussed below. The proper authorities should include the State Director in a State authorized to run a hazardous waste program under subtitle C of RCRA and, in an unauthorized State, the EPA Regional Administrator.

The owner or operator may be responsible for the regulated hazardous waste upon its discovery at the facility and thus should comply with the applicable regulations. In a State authorized under subtitle C of RCRA, the applicable regulations are generally State regulations. In an unauthorized State, the applicable regulations are the appropriate Federal regulations (primarily those found at 40 CFR parts 260 through 270). Generally, if the owner or operator is able to identify the waste as a regulated hazardous waste while the material is still in the possession of the transporter, and refuses to accept the waste at the MSWLF, the waste remains the responsibility of the transporter. However, if the owner or operator discovers regulated hazardous waste at the MSWLF, the owner or operator must ensure that the wastes are treated, stored, or disposed of in accordance with RCRA and applicable State requirements. He or she may choose to keep the wastes on site or to transport them off site to a RCRA subtitle C facility. If the owner or operator transports the wastes off site, he or she must ensure that the wastes are properly manifested and packaged in accordance with 40 CFR part 262 or the analogous authorized State requirements. This would include designating a facility permitted to treat, store, or dispose of the hazardous waste. If the owner or operator decides to treat, store, or dispose of hazardous wastes on site, he or she must comply with the applicable State and Federal requirements. The requirements for treatment, storage or disposal of hazardous waste vary from State to State. Thus, when located in a State with an authorized program, the owner or operator should consult the State regulations.

2. Section 258.21 Cover Material Requirements

The proposed rule specified application of suitable cover material at the end of each operating day, or at more frequent intervals, if necessary, to control disease vectors, fires, odors, blowing litter, and scavenging. Under the proposal, the States could temporarily waive the daily cover requirement on a case-by-case basis in the event of extreme seasonal climate conditions, such as heavy snow or severe freezing, that make this requirement impractical.

In the preamble to the proposed rule, EPA recommended that if earthen materials were used, six inches be applied and requested comment on using this approach for the final rule. Many commenters supported the use of earthen materials, suggesting that it either be a minimum of six inches or be sufficient to hold down paper. Commenters also recommended that this be incorporated in the final rule.

In response to these comments, the final rule requires the owner or operator of an MSWLF unit to cover disposed solid waste with six inches of earthen materials (i.e., soils) unless an approved State approves alternative cover materials. The Agency selected a six-inch depth based on data that show that six inches of compacted sandy loam are necessary to prevent fly emergence (Response to Comments Document—Operating Criteria). The Agency

believes that by requiring six inches of earthen materials, it will be easier to implement and enforce today's rule. EPA believes this requirement will not significantly affect many facilities because 45 States and Territories already specifically require six inches of earthen material as daily cover and the practice is standard operating procedure at most MSWLFs.

The rule as proposed allowed other suitable materials to be used as cover and EPA specifically requested comment on what other materials might be suitable. In response, commenters suggested materials that included geotextiles, foams, plastic sheets, tarps, sewage sludge, "fluff" (non-metallic residue from metal shredding operations), municipal waste combustion ash, paper mill sludges, used asphalt material from street maintenance, composted yard wastes, wood chip grindings from tree trimmings, and even "materials ordinarily disposed of in landfills."

In today's final rule, the Agency has not specified appropriate alternative materials because the Agency does not have sufficient information on all materials that could be used as daily cover and does not want to preclude the use of materials that may be found at a later date to be adequate daily cover material. However, to allow owners and operators of MSWLFs to take advantage of new technologies or to use cover materials that address specific geographic situations, the final rule provides that the approved States may allow alternative materials of alternative thicknesses. Under § 258.21(b), the owner or operator must demonstrate that the alternative material and thickness will control disease vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment. The Agency plans to provide guidance on this issue, including methods for evaluating alternative materials, in the technical guidance for this rule described in section V of today's preamble. In this guidance, the Agency will discuss the various alternative materials suggested by commenters and the Agency's concerns regarding the use of certain materials (e.g., MWC ash).

An important aspect of this alternative cover provision is that decisions can be made only by States with EPA-approved programs. These approved programs will ensure that the State will interact with the owners or operators when approving an alternative cover material, thus ensuring that the alternative material will be protective of human health and the environment. Therefore, only owners or operators located in States with approved programs have the opportunity to demonstrate to the State that alternative materials can be used.

The proposed rule specified that cover be applied at the end of each operating day, or at more frequent intervals if necessary, to control disease vectors, fires, odors, blowing litter, and scavenging. EPA requested comments on the appropriate frequencies for application of cover. Numerous commenters addressed this issue. Many rural communities criticized the requirement for daily application of cover, arguing that weekly cover extends the life of the landfill and, given their rural location, there was little potential of health hazards. Some commenters suggested that the type of waste received (e.g., inert materials) be used to determine the frequency of application. Several commenters suggested that the requirement be revised to state that waste should not be exposed for a specified time period, such as 16 or 24 hours, rather than requiring daily cover.

Today's final rule retains the proposed daily cover requirement because the Agency does not believe the commenters provided sufficient information to warrant modifications. Daily cover serves several specific purposes for protecting human health and the environment: (1) It helps in disease vector and rodent control; (2) it helps contain odor, litter, and air emissions, which may threaten human health and environment and/or be aesthetically displeasing; (3) it lessens the risk and spread of fires; and (4) it reduces infiltration of rainwater by increasing run-off and thereby decreases leachate generation and surface and ground-water contamination. Cover material applied less frequently will not be as effective in meeting these above purposes. As an additional benefit, daily cover material enhances the site appearance and its utilization after completion.

EPA proposed temporarily waiving daily cover for extreme seasonal climatic conditions. EPA also asked for comment on whether there are other reasons besides extreme seasonal climatic conditions for temporarily exempting daily cover. Commenters suggested that, in addition to climate, States be allowed to consider the types and quantities of wastes received, the location of the facility, the facility design and operation, and the practicable capability of the operator.

The Agency decided that the rationales provided by commenters for including factors in addition to extreme climatic conditions were not persuasive enough to be included in the final rule. The Agency rejected these comments because daily cover is a necessary good housekeeping practice and should be required regardless of waste types, location of the facility, and the design and operation of the facility. Unlike extreme climatic conditions, which make the placement of daily cover very difficult, the conditions cited by commenters do not pose significant obstacles to daily cover operation. The Agency believes that the protection provided to human health and the environment by daily cover outweighs any of the difficulties cited by commenters.

Today's final rule provides that only States with approved programs may approve temporary waivers for extreme seasonal climatic conditions because the Agency believes that the State should be involved in deciding whether a waiver is necessary. In addition, States without approved programs may not have the procedures or authority to implement these waivers.

3. Section 258.22 Disease Vector Control

The Agency did not receive any comments on the proposed disease vector requirement and has retained it in the final rule. Thus, as proposed, today's rule requires that each owner or operator of an MSWLF prevent or control on-site disease vector populations using appropriate techniques to protect human health and the environment. This standard is intended to prevent the facility from being a breeding ground, habitat, or feeding area for disease vector populations. Vector control activities are to be undertaken in conjunction with the application of cover material required by § 258.21. If cover material requirements prove insufficient to ensure vector control, other steps must be taken by the owner or operator to ensure such control, (e.g., shredding the waste). Methods for controlling disease vectors will be discussed in the technical guidance document for this rule.

4. Section 258.23 Explosive Gases Control

The decomposition of solid waste (in particular, household waste) produces methane, an explosive gas. The accumulation of methane in MSWLF structures can result in fire and explosions that can injure or kill

employees, users of the disposal site, and occupants of nearby structures, and can damage containment structures and thereby cause the emission of toxic fumes. For this reason, EPA established an explosive gas criterion in § 257.3–8 of the original subtitle D Criteria to control the concentration of methane in facility structures and at the property boundary. Specifically, § 257.3–8 required that the concentration of methane generated by the MSWLF not exceed 25 percent of the lower explosive limit (LEL) in facility structures (excluding gas control or recovery system components) and that it not exceed the LEL itself at the property boundary. EPA expanded this requirement in § 258.23 of the proposed rule by requiring the owner or operator to conduct subsurface and facility structure gas monitoring at least quarterly to ensure methane control. In addition, EPA proposed that if methane exceeds the limits specified, the owner or operator must take necessary steps to ensure protection of human health and immediately notify the State of the level detected and the steps taken to protect human health. Such steps could include evacuation and ventilation of affected buildings. The Agency also proposed that the owner or operator submit a remediation plan to the States within 14 days of the methane limits having been exceeded. This plan must describe the nature and extent of the problem and the proposed remedy.

The proposal listed site-specific factors that control the rate and extent of gas migration, which should be considered to determine the type and optimal frequency of monitoring (which in some instances may be more than quarterly). These factors include: soil conditions, hydrogeologic conditions surrounding the disposal site, hydraulic conditions surrounding the disposal site, and the location of facility structures relative to property boundaries.

Many commenters criticized the minimum frequency of quarterly monitoring and recommended that States be allowed to specify the monitoring frequency. Some also suggested that exceptions to quarterly monitoring be permitted based on climate (either dry or cold), type or quantity of waste disposed, and distance from structures or other facilities.

The Agency decided to retain the minimum quarterly monitoring frequency requirement because the Agency was not persuaded that dry or cold climates, type or quantity of waste disposed, and location of the facility should be factors for waiving quarterly monitoring. Catastrophic results may occur if methane levels remain unchecked; therefore, the Agency believes for safety reasons it is necessary to retain the minimum quarterly frequency for methane monitoring in the final rulemaking. The Agency believes that methane monitoring is critical because it provides an early warning of potential methane build-up that may lead to explosions, and that quarterly monitoring accounts for the seasonal variations in subsurface gas migration patterns.

As mentioned above, EPA also proposed that certain steps be taken if methane gas levels exceeding the specified limits are detected. The Agency did not receive any comments on the proposed § 258.23(c) (1) and (2), which required the owner or operator to take all necessary steps to protect human health and immediately notify the State of methane levels detected and actions taken. Therefore, EPA retained these provisions as proposed, with minor modifications in keeping with the self-implementing aspects of today's final rule. EPA has clarified the rule language by requiring the owner or operator to notify the State immediately when the methane limits have been exceeded, and within seven days place in the operating record documentation of the methane gas levels detected and a description of the interim steps taken to protect human health. The Agency believes that seven days is adequate time for the owner or operator to place the documentation in the operating record. However, the Agency is allowing the State Director to establish alternative recordkeeping locations and alternative schedules for recordkeeping and notification requirements. The Agency included the operating record provision to ensure that there is proper documentation if methane levels are exceeded and to facilitate citizen suits.

EPA received numerous comments regarding proposed § 258.23(c)(3), which required the owner or operator to submit a methane remediation plan within 14 days. Many commenters criticized the 14-day period for submitting a remediation plan as being unrealistically short. Commenters said that plans for interim measures could be submitted in that time frame to ensure the immediate protection of human health and the environment, but that determination of the problem and the exact nature of remediation would take much longer. Proposed time schedules ranged from 30 to 90 days. The Agency agrees with these commenters that the 14-day response time was not a realistic time period to allow an owner or operator to make a complete determination of the methane problem and to adequately evaluate the alternatives for remedial action to alleviate the problem and to submit a remediation plan.

The Agency considered the alternative time frames, ranging from 30 to 90 days, suggested by the commenters. The Agency determined that 60 days will provide adequate time for an owner or operator to develop and place in the operating record a remediation plan that would describe the nature and extent of the problem and the proposed remedy without causing undue threat to human health, and modified the final rule accordingly. This 60-day time period is needed to provide adequate time for the owner or operator to contact, if necessary, knowledgeable outside parties to assist in the development of the remediation plan, which should include determination of the exact location and extent of the methane gas problem, determination of the need for and location of interceptor gas collection trenches, and a decision as to whether venting of structures and subsurface gas withdrawal is necessary. EPA does not believe that allowing this additional time compromises the protection of human health and the environment because, under § 258.23(c)(1), the owner or operator still must take all necessary steps to ensure immediate protection of human health, including interim measures, if methane gas levels exceed the specified limits. Rather, a reasonable specific time period for the development of a plan facilitates the self-implementing nature of today's rule.

The Agency also modified the rule to require the owner or operator to place the remediation plan in the operating record and to notify the State. The plan is then to be implemented once it has been placed in the operating record. The Agency added this requirement to the final rule to provide a mechanism to ensure that the owner or operator develops a remediation plan, when necessary, and that the plan is made available for State and public review. The final rule allows Directors of approved States to establish alternative recordkeeping locations and alternative schedules for recordkeeping and notification requirements.

5. Section 258.24 Air Criteria

Under § 258.24(a), EPA proposed to require that MSWLFs not violate applicable requirements of State Implementation Plans (SIPs) under section 110 of the Clean Air Act (CAA). Section 258.24(b) proposed to prohibit open burning (i.e., uncontrolled or unconfined combustion) of solid waste

but allow infrequent burning of agricultural wastes, silvicultural wastes, land-clearing debris, diseased trees, debris from emergency cleanup operations, and ordnance (e.g., ammunition and bombs). These requirements were already in effect under part 257. In the proposed rule, the Agency clarified that empty pesticide containers or waste pesticides were not exempted agricultural wastes. This interpretation has been used by the Agency in implementing the air criteria requirements for solid waste disposal facilities under 40 CFR part 257 (see 44 FR 53438).

Today's final rule is unchanged from that proposed, with the exception that ordnance has been deleted from the list of wastes that may be burned at MSWLFs. This is because the Agency recognizes that ordnance (e.g., ammunition and bombs) may be capable of detonation and exhibits the characteristic of reactivity, and is thus regulated as a hazardous waste (40 CFR 261.23). Under existing regulations, all hazardous waste must be transported to a hazardous waste treatment, storage or disposal facility that has received either interim status or a RCRA part B permit under 40 CFR part 270; therefore, ordnance may not be open-burned at an MSWLF.

In the preamble to the proposal, EPA noted that MSWLF air emissions, other than from open burning, would be regulated under the CAA section 111(b) for new landfills and section 111(d) for existing landfills at some future date. Several commenters criticized the Agency's decision to regulate emissions from MSWLFs under these sections of the CAA, stating that the CAA's structure is cumbersome and ill-suited to address the control of air emissions from landfills. They suggested that these emissions be regulated under subtitle D.

EPA disagrees with these commenters. The Clean Air Act is the Agency's primary statutory authority for addressing air quality concerns. As such, EPA believes it is appropriate to regulate air emissions from MSWLFs under the CAA. Therefore, under section 111(d), EPA is planning to propose air emission regulations to be adopted and used by the States to prepare plans for controlling air emissions from MSWLF units.

Although a few commenters expressed support for the ban on open burning, small rural communities expressed widespread opposition. Commenters opposing the ban stated that burning reduces the volume to be buried and thereby extends the useful life of a landfill, poses less of a threat to the environment than does burying raw garbage (i.e., that pollution caused by burning was probably less of a problem than ground-water pollution caused by burying), does not attract rodents and wild animals, and eliminates the methane problem. Many commenters argued that the burning of yard waste (particularly brush, tree limbs, undiseased trees, and untreated wood products) should be allowed. Some commenters argued that prohibiting open burning would increase the cost of solid waste disposal. Others argued that if existing small landfills were forced to close, uncontrolled burns and midnight dumping would increase. EPA originally established the ban on open burning in 1979 in the part 257 Criteria. The rationale for banning open burning of solid waste in 1979 is equally applicable today; that is, the hazards posed to human health by allowing the open burning of solid waste (e.g., the increase in particulate emissions, decreased safety) outweigh any benefits derived from the practice. For example, EPA has data indicating that smoke from open burning can reduce aircraft and automobile visibility and has been linked to automobile accidents and deaths on expressways. Open burning may result in uncontrolled emissions of hazardous constituents that pose a threat to human health and the environment. Furthermore, commenters did not submit data to support their claims that open burning poses less of an environmental threat than does landfilling the waste. EPA decided that any cost savings did not outweigh the benefits to human health and the environment in this case. For the reasons described above, EPA retained the open burning prohibition in today's final rulemaking.

Numerous commenters expressed support for burning yard waste at MSWLFs using trench incinerators, pit burners, or air curtain destructors. Commenters stated that air curtain destructors have been shown to reduce waste volume by 98%, and particulate air emissions by 80–90%. EPA carefully reviewed the data submitted by commenters on this issue. Although there has been some improvement in this technology over the last ten years, EPA concluded that these devices still emit unacceptable levels of particulates. While trench incinerators, pit burners and air curtain destructors reduce air emissions by 80–90%, EPA's test data indicates that such particulate emissions are similar to particulate emissions from open burning (Reference: Background Document—Operating Criteria). Furthermore, because these devices do not control the emission of combustion products, they are considered "open burning." Open burning is defined under § 258.2 as the combustion of solid waste (1) without control of combustion air to maintain adequate temperature for efficient combustion; (2) without containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion; and (3) without the control of the emission of the combustion products (see also 40 CFR 257.3–7(c)).

The Agency would also like to note that although open burning of most wastes is prohibited at MSWLFs under the final rule, infrequent burning of certain materials is permitted. Materials that may be burned infrequently are agricultural wastes, silvicultural wastes, land-clearing debris, diseased trees, and debris from emergency cleanup operations. This approach is consistent with EPA's existing requirements at 40 CFR part 257 for solid waste disposal facilities and practices (see 44 FR 53458, September 13, 1979). The open burning of these materials is not typically an ongoing practice and, thus, does not present a significant environmental risk. In addition, destruction of disease-carrying trees or debris from emergency operations provides an added environmental benefit in preventing chances of disease or accident. Today's final criteria do require that the conduct of these infrequent acts of burning must be in compliance with applicable requirements under the State SIPs. In response to comments, EPA is clarifying today that the open burning of yard wastes, pesticide containers, and wooden pallets is not an allowed practice. Open burning should be conducted in areas dedicated for that purpose at a distance from the landfill unit so as to preclude the accidental burning of other solid waste.

6. Section 258.25 Access Requirements

EPA proposed to require control of public access to new and existing MSWLF units to prevent illegal dumping of wastes, public exposure to hazards at MSWLFs, and unauthorized vehicular traffic. Access control is a key element in preventing injury or death at these facilities. The proposal also required the use of artificial or natural barriers, as necessary, to prevent illegal dumping of wastes and unauthorized vehicular traffic. This requirement is intended to prevent the illegal disposal of regulated hazardous waste as defined under 40 CFR part 261 and PCB wastes as defined under 40 CFR part 761 and unauthorized vehicular traffic when the facility is closed, not to prevent access for controlled disposal.

A few commenters were concerned that dumping outside the MSWLF would occur if the site were not accessible at all times. They recommended that the rule be revised to ensure site access at all times.

The Agency disagrees that requiring the facility to be accessible to the public at all times to prevent the problem of dumping wastes outside the landfill area during off-hours outweighs the potential problems that may occur with uncontrolled access. Access control is necessary to prevent illegal dumping of hazardous wastes and direct public exposure to solid waste and is a key element in preventing injury or death at MSWLFs. The importance of access control cannot be overstated, because people have suffered injury and even death at uncontrolled waste disposal facilities. The most effective means of minimizing the risk of injury to persons (other than users of the MSWLF) is to completely prohibit (e.g., by suitable fencing) access to the site by unauthorized users. Minimizing the risk of injury to users of the MSWLF, another purpose of today's requirement, can be met by strictly controlling disposal on site. In areas where access is necessary after the landfill is closed, the owner or operator may want to place a waste receptor just outside the facility for disposal of waste during hours that the facility is closed. For the above reasons, EPA decided to retain, in the final rule, the proposed approach.

7. Section 258.26 Run-on/Run-off Control Systems

The proposed rule required the owner or operator of an MSWLF to design, construct, and maintain a run-on control system to prevent flow onto the active portion of the MSWLF during peak discharge of a 25-year storm. The purpose of the run-on standard is to minimize the amount of surface water entering the landfill facility. Run-on controls prevent (1) erosion, which may damage the physical structure of the landfill; (2) the surface discharge of wastes in solution or suspension; and (3) the downward percolation of run-on through wastes, creating leachate.

The proposed rule also required that the owner or operator of an MSWLF design, construct, and maintain a system to control run-off from the active portion of the landfill. The run-off control system must collect and control, at a minimum, the water volume resulting from a 24-hour, 25-year storm. Run-off from the active portion of the unit must be handled in accordance with § 258.27 of the proposal in order to ensure that the CWA NPDES requirements and CWA sections 208 and 319 requirements are not violated. The Agency chose the 24-hour period because it is an average that includes storms of high intensity with short duration and storms of low intensity with long duration.

Several commenters suggested that (1) the run-on/run-off control system be required to handle a 100-year storm and (2) the run-off be collected, sampled, and analyzed prior to its release to surface waters rather than after the water is released.

In today's final rule, the Agency retained the language of the proposal because EPA believes that the 25-year storm requirement is more appropriate than the 100-year storm requirement for MSWLFs. The former is a more widely used standard and is the current standard used for hazardous waste landfills. In addition, the Agency could not identify any existing case studies that challenged the Agency's assumption that the 25-year storm design is protective of human health and the environment. EPA has no information that warrants a more restrictive standard for MSWLFs than for hazardous waste landfills.

In response to the comment regarding testing of run-off, the Agency would like to clarify that the proposed rule, and today's final rule, calls for the owner or operator to collect and control the run-off from the active portion of the landfill. It does not require that the collected run-off be sampled or treated, but rather that it be handled in accordance with the requirements of the Clean Water Act including, but not limited to, the NPDES requirements (see § 258.27(a)). The owner or operator's NPDES permit may require the facility to sample run-off prior to surface water release. EPA believes that the Clean Water Act is the appropriate mechanism for ensuring that point source discharges are protective of human health and the environment.

8. Section 258.27 Surface Water Requirements

It is essential that solid waste activities not adversely affect the quality of the nation's surface waters. The regulations as proposed prohibited any MSWLF unit from (1) causing a discharge of pollutants into waters of the United States, including wetlands, that violates any requirement of the CWA, including, but not limited to, NPDES requirements; and (2) causing a nonpoint source of pollution to the waters of the United States, including wetlands, that violates any requirements of a state-wide or area-wide water quality management plan under section 208 or section 319 of the CWA. The proposed § 258.27 requirement is the same as the surface water criterion currently in effect under part 257.

Commenters were concerned over the proposed relationship between RCRA and the CWA. One commenter recommended that monitoring requirements for MSWLFs be developed either under subtitle D or under the NPDES program and that they be tailored for solid waste disposal facilities. Another commenter requested that the proposed subtitle D rules specify requirements to be added to NPDES permits.

The Agency decided to retain, in the final rule, the proposed approach. Under section 1006 of RCRA, EPA is required to integrate, to the maximum extent practicable, the provisions of RCRA with other statutes, including the CWA. Under today's approach, NPDES requirements for landfills will be implemented under the NPDES permitting program, because NPDES permits are site-specific and NPDES permit writers are in the best position to ensure that the surface water requirements are met for MSWLFs. Moreover, as discussed previously, enforcement under subtitle D is limited to instances where EPA has found the State program to be inadequate. The CWA does not have similar limitations on EPA's enforcement authority. Thus, the Agency believes that compliance with surface water regulations is best suited to mechanisms already established under the CWA.

Under today's final regulations, any discharge of pollutants from MSWLF units into the waters of the United States must comply with regulations developed under the CWA, including section 402 (NPDES permits). Regulations that specifically address compliance of MSWLF units with the CWA will be developed under the CWA as needed. Although EPA has not yet specifically established national limits for discharge to surface water from MSWLFs, discharge limits are set on a case-by-case basis. The Agency may, however, issue national limits for MSWLF discharges at a later date.

A commenter requested that the proposed regulations specify the circumstances that trigger the Army Corps of Engineers' jurisdiction with regard to NPDES permits. Under section 402 of the CWA, EPA (and States approved by EPA) has jurisdiction for the discharge of all pollutants (other than dredged and fill material) into waters of the United States. Under section 404 of the CWA, both the Corps of Engineers and EPA have jurisdiction over the discharge of dredged and fill materials into waters of the U.S.

The Agency retained § 258.27(b) of the proposed rule in the final rulemaking. This requirement specifies that any discharges of a nonpoint source of pollution from an MSWLF into waters of the United States must be in conformance with any established water quality management plan developed under section 208 or section 319 of the CWA.

9. Section 258.28 Liquids Restrictions

EPA's proposed rule prohibited the disposal in MSWLFs of bulk or noncontainerized liquid wastes, except (1) household wastes (other than septic wastes) and (2) leachate and gas condensate that is derived from the MSWLF unit where the unit is equipped with a composite liner and a leachate collection system (LCS) designed and constructed to maintain less than 30 centimeters of leachate over the liner. Containers of liquid waste could be placed in MSWLFs only when the containers (1) were small containers of the size typically found in household waste; (2) were designed to hold liquids for use other than storage; or (3) held household waste. The proposed rule required the owner or operator to determine if the wastes (e.g., septic wastes, municipal wastewater sludge) are liquid wastes by the Paint Filter Liquids Test method (Method 9095 as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW–846). The rationale for each of these proposed provisions is included in the preamble to the proposed rule (see 53 FR 33340, August 30, 1988).

Numerous commenters expressed opposition to the general concept of restricting the amounts of liquids that are disposed of in MSWLFs. Many commenters believed that the proposed restrictions would require separate disposal facilities for liquid waste.

The Agency believes that liquids restrictions are necessary because the disposal of liquids into landfills can be a significant source of leachate generation. By restricting the introduction of liquids into landfills through a ban on the disposal of bulk (except nonseptic waste from households and recirculated leachate and gas condensate at facilities that meet the specific design requirements) and containerized wastes, EPA expects to minimize the leachate generation potential of landfills. This should reduce the quantity of free liquids to be managed in MSWLFs, which in turn should reduce the risk of liner failure and subsequent contamination of the ground water. The ban on containerized free liquids (except those from households) will also reduce the problem of subsidence and possible damage to the final cover upon possible deterioration of the waste containers.

EPA does recognize that restricting certain small volume liquids may be impractical and unnecessary to protect human health and the environment. For example, small amounts of liquid will be present in household wastes when disposed and may be difficult to effectively identify, separate, and restrict from disposal. For this reason, the final rule exempts household waste, except septic wastes, from the bulk and noncontainerized liquids restrictions. Septic waste is not exempted because it can be easily identified and will contain significant amounts of liquid if it fails the Paint Filter Liquids Test method.

As proposed, the final rule continues to exempt certain small containers (e.g., beverage containers) and certain other wastes from the containerized liquids ban because they are not likely to contribute substantial amounts of liquids to most landfills. However, the Agency recognizes that certain small containers (e.g., paint cans) contain household hazardous wastes; the Agency recommends that such wastes be managed through household hazardous waste collection programs present in many communities.

Commenters suggested considering soil, ground-water levels, climate, and history of landfill operations to determine if liquid wastes can be accepted at a particular landfill without endangering the environment or operation of the landfill. Many commenters believed that the State should have more flexibility determining whether bulk or non-containerized liquids should be disposed of in MSWLFs.

The Agency does not agree with these comments. EPA believes that the problems associated with disposal of bulk and containerized liquids, as discussed above, are relevant to all landfills regardless of location (i.e., climatic and geologic factors), and thus waivers to this requirement based on location would not be appropriate (Reference: Background Document—Operating Criteria).

Numerous commenters were concerned with the practicability of finding alternative disposal methods for wastes such as septic tank, grease trap, oily water, and sand trap wastes. EPA believes that the 18-month period between the promulgation date and the effective date of the rule is adequate time to allow liquid waste disposers to develop alternatives to liquids disposal in MSWLFs. However, the Agency wishes to clarify that although liquid materials, such as septic tank, grease trap, oily water and sand trap wastes that fail the Paint Filter Liquids Test method are banned, they can be solidified prior to their disposal in MSWLFs. Possible solidification methods include the addition of absorbent materials. The solidified wastes must pass the Paint Filter Liquids Test method.

The Agency specifically requested in the preamble to the proposed rule the submittal of any data on the benefits or effects of leachate recirculation. The Agency received numerous differing opinions regarding leachate recirculation. Some commenters expressed support, stating that moisture promotes the decomposition of wastes and stabilization of the landfill and conserves the nutrients required for stabilization, improves leachate quality, increases the quantity and quality of methane production, and decreases the time the landfill is generating contaminated leachate. Those opposed to leachate recirculation noted that it was unlikely that a collection system could maintain a leachate head of 30-centimeters in a humid area. They recommended that EPA only allow leachate recirculation in arid locations for which field experience shows that recirculation will not produce a significant leachate head within the unit.

The Agency recognizes that landfills are, in effect, biological systems that require moisture for decomposition to occur and that this moisture promotes decomposition of the wastes and stabilization of the landfill. Limited studies have indicated that leachate recirculation has certain benefits, which include increasing the rate of waste stabilization, improving leachate quality, and increasing the quantity and quality of methane gas production. Leachate recirculation may also be a very useful tool for management of leachate (Reference: Background Document—Operating).

On the other hand, the Agency believes that many landfills, particularly those in humid areas, already have sufficient liquid for decomposition and thus the intentional addition of liquids is unnecessary. The wastes received at landfills already contain moisture (10 percent to 35 percent by volume), and more is added by rainfall and by the decomposition process itself. Moreover, the Agency recognizes that potential operational problems associated with leachate recirculation, such as increase in leachate production, clogging of the leachate collection system, buildup of hydraulic head within the unit, increase

in air emissions and odor problems, and increase in potential of leachate pollutant releases due to drift and/or run-off, may result in adverse impacts on human health and the environment.

The Agency recognizes that there are pros and cons on the issue of leachate recirculation and that the information on leachate recirculation is limited in some areas. Because the Agency has data that indicate that there are benefits associated with recirculating leachate, the Agency believes that a ban on leachate recirculation is inappropriate (Reference: Background Document—Operating Criteria). The Agency believes that leachate recirculation should only be allowed when (1) specified design controls have been installed at the MSWLF unit and (2) recirculation does not produce a significant leachate head within the unit.

The proposed rule specified that leachate and gas condensate derived from the MSWLF unit would be exempt from the liquids prohibition if the unit were equipped with a composite liner and a leachate collection system designed and constructed to maintain less than 30-centimeters of leachate over the liner. The Agency received several comments on the proposed design for leachate and gas condensate recirculation. In general, those that commented objected to the proposed liner requirements for leachate recirculation. Commenters said that the composite liner was an unnecessary prerequisite for the recirculation of leachate. Several stated that liners should not be required for all landfills, one commenter noting that the composite liner described would be difficult to construct in many areas due to the absence of clay. Others supported a waiver based on geology, precipitation, evapotranspiration, use of a leachate collection system, and spraying patterns. One commenter recommended that alternative designs be considered (e.g., the use of slurry walls).

The Agency believes that a composite liner is necessary for leachate and gas condensate recirculation. Specifically, a composite liner with a leachate collection system designed and constructed to maintain less than a 30-centimeter depth of leachate over the liner is necessary to ensure protection of human health and the environment. The Agency believes that the composite liner design, which consists of a two-foot layer of compacted soil with hydraulic conductivity of no more than (1×10^{-7}) centimeters per second with a 30-mil flexible membrane liner (FML) component installed in direct and uniform contact above the compacted-soil component, provides protection necessary to ensure that contaminant migration to the aquifer is controlled. First, the FML portion of the liner will increase leachate collection efficiency and provide a more effective hydraulic barrier. Second, the soil portion will provide support for the FML and the leachate collection system and act as a back-up in the event of failure of the FML. The composite liner with a leachate collection system design is the same as that used for the uniform design standard under § 258.40(a) of this rule. For a detailed discussion on the requirements and rationale for the composite liner, see the design criteria discussion in appendix E.

Unlike other MSWLFs, those operating with leachate recirculation must be designed, at a minimum, with the composite liner described above. The Agency considered less stringent designs but determined that variances to the composite design should not be allowed, even in approved States, because the composite design ensures leachate collection efficiency, a necessary component of a successful leachate recirculation program. Therefore, owners or operators of MSWLFs in approved States cannot use alternative designs provided for in § 258.40 of today's rule if they wish to recirculate leachate.

The owner/operator must notify the State Director that documentation of the landfill design is located in the facility's operating record. Today's final rule allows the State Director to specify alternative recordkeeping locations and alternative schedules for recordkeeping and notification requirements.

Other commenters recommended use of a double flexible membrane system with a leachate collection system either beneath the bottom liner or between the two liners in lieu of the composite liner. Another commenter stated that, given the greater potential for release of liquid from the facility, the most stringent containment requirements should be applied to facilities that recirculate leachate.

EPA does not agree that a double flexible membrane liner system without a soil component would be as protective as the composite liner, as defined. A compacted-soil component is necessary for proper function of the FML component. It provides support and a back-up mechanism in case of failure of the FML component. The Agency also believes that the composite liner and leachate collection system is the most stringent design necessary for MSWLF units that recirculate leachate or gas condensate. The rationale for choosing this design is discussed in detail in appendix E of today's rulemaking.

The proposed rule defined gas condensate as "the liquid generated as a result of the gas collection and recovery process at the municipal solid waste landfill units." Several commenters stated that it is not clear whether gas condensate recirculation means solely the discharge of liquid condensate into the refuse mass or whether it includes the combination of the condensate and the leachate from the leachate collection system.

The Agency uses the term "gas condensate recirculation" to mean the discharge of the liquid condensate into the refuse mass. If the condensate is combined into the leachate collection system and the leachate is discharged back into the refuse mass, then this also is recirculation and the necessary design is required. In order to clarify this even further, the Agency revised the definition of gas condensate to include only the condensate generated from the gas recovery process and not to include the condensate that is inadvertently generated from the gas collection system.

EPA received no comments supporting a ban of gas condensate recirculation. As a result, the Agency decided to allow gas condensate recirculation at facilities with the design described above because the quantities involved are small, and gas collection has benefits to the environment through the recovery of energy and the control of gas migration.

10. Section 258.29 Recordkeeping Requirements

The proposed rule required that information be recorded and retained by the owner or operator of each MSWLF. Information to be retained included: Inspection records, training procedures, and notification procedures required under § 258.20; gas monitoring results from monitoring required by § 258.23; closure and post-closure plans as required by §§ 258.30(b) and 258.31(c); and monitoring, testing, and analytical data required by the ground-water monitoring requirements under subpart E.

Although the proposed rule specified that certain documents be retained (including ground-water monitoring, testing, and analytical data required by subpart E), EPA received comments requesting that additional documentation prepared by the owner or operator be retained. Commenters specifically requested that documentation concerning the siting process design plans, and the financial

status of the facility be included. Today's rule adds additional recordkeeping requirements consistent with the intent of the proposed rule and comments received. The following documents have been added to the recordkeeping requirements: Any location restriction demonstration required under subpart B; unit design documentation for leachate and gas condensate recirculation as required under § 258.28(a)(2); and any cost estimates and financial documentation required by subpart G of this part.

Today's rule provides that the information be maintained in an operating record. EPA's intent, stated in the preamble to the proposed rule, was that the recordkeeping documents be kept in a single location. By requiring the owner or operator to keep the recordkeeping documents in the operating record, today's final rule clarifies EPA's stated intent. Today's final rule requires that the operating record be maintained near the facility. The appropriate location may be the facility itself, or the corporate headquarters or city hall, depending on the size of the landfill and/or the ownership of the landfill. Records should be retained throughout the life of the facility, including post-closure care. Documents should be organized, legible, dated, and signed by the appropriate personnel. Upon completion of each document required in the operating record, the owner or operator must notify the State Director of its existence. This requirement applies to owners and operators in both approved and unapproved States. The Director of an Approved State has the flexibility to establish alternative locations for recordkeeping and alternative schedules for recordkeeping and notification requirements.

Commenters recommended making MSWLF records available to the public, suggesting that these data were relevant for citizen enforcement. Several commenters suggested that the omission of any requirements in the proposed rule to submit data to the State or to make them available to the public could effectively eliminate any citizen enforcement of the regulations. On the other hand, another commenter proposed that EPA allow the States more flexibility to determine what records should be kept at the facility and made available for public review.

EPA agrees that public access to MSWLF records either directly from the owner or operator or through the State is essential. Therefore, today's final rule requires the owner or operator to retain the operating record near the facility and to furnish the information to the State upon request, or to make it available to the State during reasonable times. The information should be available in most States to citizens through a State Freedom of Information Act request.

Appendix E—Supplemental Information for Subpart D—Design Criteria

1. Overview of Proposed Rule

Section 258.40(a) of the proposal established a performance standard based on risk that would require new MSWLFs to be designed with liner systems, leachate collection systems (LCSs), and final covers, as necessary to meet the design goal in the aquifer at the waste management unit boundary or an alternative boundary, as specified by the State. As proposed, the design goal would be an overall ground-water carcinogenic risk level established by the State. At a minimum, the design goal under proposed § 258.40(b) would have to fall within the protective risk range of 1×10^{-4} to 1×10^{-7} and encompass risks posed by over 200 hazardous constituents listed in the proposed appendix II.

To comply with the proposed requirements, an owner or operator would have to develop and propose a design that would achieve the State-specified design goal in the aquifer at the waste management unit boundary or alternative boundary. This would involve modeling the release of appendix II constituents from the landfill equipped with the proposed design, to predict the concentration of the various constituents in ground-water, and then determining whether the combined risks posed by these constituents fell within the State-specified design goal. Under proposed § 258.40(c), the State would evaluate the proposed design considering the following factors: (1) The hydrogeologic characteristics of the facility and surrounding land, (2) the climatic factors of the area, (3) the volume and physical characteristics of the leachate, (4) the proximity to ground-water, and (5) the quality of ground-water.

In the preamble to the proposed rule, EPA described and requested comments on several possible alternatives to the proposed approach. These alternatives include various alternative performance standards, a uniform design standard (with and without variances), and the categorical approach (see 53 FR 33354 through 33365; August 30, 1988).

As indicated above, the Agency proposed one design standard for new MSWLFs that addressed the liner and leachate collection system, as well as the final cover system. In developing the final rule, EPA determined that it would be clearer and more appropriate to present separate design requirements for the liner/leachate collection system and the final cover system in the final rule. Each of these containment components play unique roles in minimizing releases from the landfill. The liner/leachate collection system is relied on to minimize releases primarily during the operating life of the MSWLF, while the final cover provides the primary long term protection after closure of the landfill. Therefore, EPA is presenting the requirements applicable to these components in separate sections of today's rule. Specifically, the liner/leachate collection system requirements have been retained in subpart D, while the final cover requirements for new and existing units have been moved to subpart F.

2. Summary of Comments

While a few commenters generally supported the proposed risk-based performance standard, the majority of commenters opposed it. Several commenters argued that this approach failed to establish minimum national standards, while nearly all commenters raised major concerns about the implementation of the proposed approach. These concerns were reflected not only in written comments, but also expressed by State and local governments, the waste management industry, and environmental groups during meetings held with EPA during the public comment period. Summaries of these meetings can be found in the docket for this rulemaking.

Several commenters asserted that if EPA adopted the proposed approach it would be abdicating the Agency's role of setting minimum national standards. These commenters argued that it is EPA's role, not the States', to set the design goal (i.e., risk level in groundwater) for MSWLFs. Second, many commenters viewed the proposed risk-based approach to be so complex that it would result in inadequate designs in many cases.

Commenters also raised three major concerns about the implementation of the proposed approach. First, commenters believed that there is insufficient technical information available to implement a risk-based approach. Numerous commenters questioned whether risk assessment methodologies were far enough developed to support the proposed approach. Some commenters strongly criticized EPA's draft risk algorithm, which EPA suggested as a preliminary

tool for implementing the proposal. Others pointed out that the lack of EPA-approved concentration or risk levels for many of the hazardous constituents in proposed appendix II would make implementation even more difficult.

Second, numerous commenters stated that most States and owners and operators do not have the technical expertise or resources necessary for successful implementation of the proposed standard. These commenters argued that most States do not have the resources to establish acceptable concentration or risk levels for compounds that lack EPA-approved standards, or to review designs based on complex modeling. Other commenters stated that owners and operators do not have the expertise or resources in most cases to complete comprehensive modeling addressing all appendix II compounds. Some commenters indicated that local governments would likely end up spending an inordinate amount of their limited resources on analysis, rather than on actual construction of a safe landfill.

Third, due to the complexity of the analysis, and the lack of public understanding of risk-based decisions, many commenters were concerned that it would be very difficult to obtain public acceptance of a risk-based design. They felt that the proposed approach would exacerbate an already very difficult siting process.

To address these concerns, commenters suggested a variety of alternative approaches. However, the majority of commenters recommended one of the following two alternatives for the final design criteria. The first major alternative suggested was the categorical approach, which would establish different design requirements for MSWLFs in four location categories that would be distinguished based on two factors—the hydrogeology of the location (measured in terms of time of travel to the aquifer) and precipitation. Numerous commenters liked this general approach of setting forth different national standards for different locations, but all recognized that certain modifications were needed to address deficiencies in the specific scheme proposed. However, the types of modifications suggested varied significantly and no commenter provided a fully developed alternative scheme. Nevertheless, these commenters believed a somewhat modified categorical approach would be flexible, yet provide more certainty and be easier to implement than the proposed risk-based approach.

Some commenters, on the other hand, objected to the categorical approach, stating that it was technically and conceptually flawed. These commenters argued that the approach is overly simplified and not technically justified. Of particular concern to these commenters is the reliance on only two factors—hydrogeology and precipitation—to distinguish location categories, as well as the unjustified cut-off values specified for each of the factors. Others pointed out that it is often very difficult and expensive to obtain reliable data needed to calculate these factors. These commenters suggested that EPA drastically revise the categorical approach or adopt the alternative described below.

The second major approach suggested by commenters included two elements—a uniform design standard and some provision allowing other designs based on site-specific conditions. Commenters differed significantly, however, on the stringency of each of these elements. For example, the uniform designs suggested varied from one identical to that required for hazardous waste disposal facilities under subtitle C of RCRA to one consisting of a single liner of either natural or artificial material with a 1×10^{-7} hydraulic conductivity and a leachate collection system. With regard to site-specific designs, some commenters argued that these should be limited to those that provide protection "equivalent to" the uniform design. However, others envisioned a more flexible approach that allowed site-specific designs that met a clearly specified environmental performance standard.

3. Evaluation of Proposal and Alternatives

In reviewing the alternatives suggested by commenters, it was clear that all preferred an approach that would (1) provide certainty and public acceptability, (2) include flexibility for variation based on site-specific conditions, and (3) be implementable, considering the availability of technical information and the technical expertise and resources of local and State governments. As a result, EPA considered each of these factors in evaluating the proposed rule and each of the alternatives suggested by commenters.

EPA carefully reevaluated the proposed risk-based approach in light of the comments described above. The Agency disagrees with commenters' arguments that EPA would fail to establish minimum national standards for MSWLFs if the proposed approach was adopted. The proposed approach would establish a national framework with substantial State flexibility to address site-specific conditions. EPA continues to believe that sufficient flexibility is essential for effective program implementation across the nation. However, EPA does agree with commenters' concern that it may be difficult to obtain public acceptance of a risk-based design, resulting in increased siting difficulties. Furthermore, EPA recognizes that many States and local governments do not have adequate technical expertise and resources to implement the proposed approach. Specifically, most States do not have the resources to establish risk levels for the large number of compounds that do not have EPA-approved standards, and most local governments and States do not have adequate resources to complete and review the complex analysis necessary to implement the risk-based approach. Therefore, the Agency rejected the proposed risk-based performance standard.

EPA then evaluated the two major alternatives discussed in the proposed rule and addressed by commenters (53 FR 33355). In examining the first alternative, the categorical approach, EPA carefully reviewed the modifications suggested by those who favored the general approach as well as the data and arguments presented by commenters who criticized the approach. In response to commenters' concerns, EPA looked closely at the technical adequacy of the categorical scheme, particularly the technical basis for the two factors (i.e., hydrogeology and precipitation) used to distinguish the location categories.

Based on this re-examination, the Agency acknowledges that it has inadequate technical information to support the methodology used to measure the hydrogeologic character of a site (i.e., the time of travel equation), as well as the specific cutoff values specified for the two factors (53 FR 33364). In addition, no commenters presented modifications that would address these technical concerns. Therefore, while EPA believes a categorical approach theoretically could provide both certainty and flexibility, the Agency rejected this alternative for the final rule because of the technical problems inherent in such a scheme.

The second major alternative examined by EPA was a uniform design standard in combination with a provision allowing alternative designs based on site-specific conditions. While the stringency of this approach varies depending on the uniform design specified as well as the structure of the

site-specific design provision, EPA believes this general approach best addresses the concerns raised by commenters. First, this approach provides more certainty to address public concerns during the siting process. Second, it provides flexibility by allowing designs based on consideration of site-specific factors. Finally, this approach should be the easiest to implement of the various approaches considered because it provides those States and local governments that have limited technical expertise and resources with an EPA-approved design, thereby avoiding the analysis and modeling that would have been needed to justify an alternative design or to implement a complex performance standard, such as the proposed risk-based approach. For these reasons, the Agency selected this general approach for the final rule. The specific elements of this approach are discussed below.

4. Final Rule Approach

The final rule approach selected by EPA includes two elements—a provision allowing site-specific designs in approved States and a uniform design standard. Specifically, today's final rule provides that new MSWLFs and lateral expansions must be constructed with either (1) in approved States, a design that is approved by the Director of an approved State and meets the performance standard specified in § 258.40, or (2) a composite liner and leachate collection system. The rationale for each of these elements is discussed below.

a. Site-Specific Designs Based on Performance Standard

The first element of today's final design criteria allows site-specific designs in approved States. As indicated above, some commenters preferred that these site-specific designs be based on an "equivalence" approach, while others favored a more flexible approach based directly on environmental performance. Under the "equivalence" approach, an owner or operator would have to demonstrate that a site-specific design would prevent migration of hazardous constituents into ground water at least as effectively as the uniform design described below. The somewhat more flexible approach would require an owner or operator to demonstrate that an alternative design would achieve a clearly specified environmental performance standard. For example, some commenters suggested that site-specific designs be permitted when the owner or operator can demonstrate that such designs will ensure the Maximum Contaminant Levels are met in ground water.

The Agency decided not to adopt the "equivalence" approach because EPA believes it would significantly limit the ability of owners and operators to utilize alternative protective designs. For example, it would likely be difficult for an owner or operator to demonstrate that a clay liner of any thickness would prevent migration as effectively as a composite liner, which includes a flexible membrane liner that, by definition, is impermeable. EPA believes that flexibility to account for site-specific conditions is particularly important for MSWLFs because municipal solid waste disposal capacity will be needed across the country in a wide range of settings.

Therefore, EPA adopted the second approach—environmental performance criteria—as the basis for site-specific designs in approved States. Specifically, § 258.40(a)(1) of today's rule specifies that these designs must ensure that the concentrations listed in table 1 will not be exceeded in the uppermost aquifer at the relevant point of compliance specified in accordance with § 258.40(d). The list of constituents in table 1 includes all those compounds with Maximum Contaminant Levels. EPA plans to update this list as new MCLs are promulgated.

Section 258.40(d) provides that the relevant point of compliance specified by the Director of an approved State shall be no more than 150 meters from the waste management unit boundary on land owned by the owner of the MSWLF. In determining the relevant point of compliance, the State Director must consider a set of factors specified in § 258.40(d). Because the relevant point of compliance plays a key role in ground-water monitoring and corrective action, the discussion of this provision, including EPA's response to comments on the proposal, is included in appendix F.

EPA recognizes that the performance standard for site-specific designs in approved States addresses fewer constituents (i.e., those with MCLs) than the proposed risk-based standard, which addressed proposed appendix II compounds. The Agency believes this approach is supported by the comments on the proposal discussed above. While the proposal addressed a more comprehensive list of compounds, commenters pointed out that it was unimplementable because (1) there is insufficient technical information, particularly EPA-approved risk levels for many of the appendix II constituents, to implement the proposed approach; (2) States and owners and operators do not have the technical expertise or resources to develop risk-based standards for all appendix II compounds; and (3) it may be difficult to obtain public acceptance of a risk-based design that is based on standards for appendix II compounds that have no EPA established risk levels. Thus, today's final standard is a direct outgrowth of EPA's proposed approach, modified to address the implementation problems raised by commenters.

Because today's design provision in approved States establishes clear, EPA-approved concentration limits for constituents in ground-water (i.e., MCLs), EPA believes it responds to several problems with the risk-based proposal. First, it eliminates the problems associated with risk calculations which were called for in the proposal. Such calculations would have to be done for many compounds for which EPA has not yet established any standards. Second, it reduces the level of State resources needed for implementation by being limited to those compounds that have EPA-approved limits. Finally, because today's final design provision is premised on EPA-approved limits (i.e., MCL's) it should provide more assurance to the public than the risk-based approach, which required States with limited technical resources to establish risk-based designs.

Although today's final standard is limited to MCL's, it is backed up by ground-water monitoring and corrective action provisions that address a comprehensive set of compounds comparable to the proposal. Appendix F contains the rationale for this comprehensive set of constituents for ground-water monitoring and corrective action. Specifically, § 258.56(a) of today's rule requires that whenever monitoring results indicate a statistically significant level of any appendix II constituent exceeding the ground-water protection standard, the owner or operator must initiate an assessment of corrective action remedies. This back-up system ensures that designs provide effective protection of human health and the environment.

The Agency acknowledges that implementation of this final design provision will still require modeling and associated analysis. To address commenters' concerns regarding the availability of technical information on this subject, EPA is developing technical guidance on modeling for inclusion in the technical guidance for this rule (see section VIII of today's preamble). In addition, to ensure proper oversight and

review of these analyses, today's rule requires that site-specific designs based on the performance standard be approved by approved States. Thus, owners and operators of MSWLFs located in unapproved States will not have the opportunity to use site-specific designs, but rather must comply with the uniform composite liner requirement discussed below. EPA believes that these two steps will ensure proper analysis and implementation of today's site-specific design provision.

Approved States must consider three factors in determining whether the design meets the performance standard of § 258.40(a)(1). These factors include: (1) The hydrogeologic characteristics of the facility and the surrounding land; (2) the climate of the area; and (3) the volume and physical and chemical characteristics of the leachate. The Agency believes that these factors, which are derived from those proposed for use with the risk-based standard, are relevant and important for evaluating designs because they all influence the nature and extent of releases to ground water. Guidance on consideration of these factors in landfill design will be included in the technical guidance for today's rule.

EPA is concerned that certain owner/operators of new units or lateral expansions may be forced to use the design standard in § 258.40(a)(2), discussed below, in situations where the composite liner specified in that section is not necessary to protect human health and the environment if their State does not have program approval. In these cases, the performance standard under § 258.40(a)(1) may be more appropriate since it would potentially avoid an unnecessarily stringent design.

Therefore, EPA established a petition process in § 258.40(e). This process allows the owner/operator to use the performance standard in § 258.40(a)(1) if the State determines that the owner/operators design meets that performance standard, the State petitions EPA to review its determination, and EPA approves the design. EPA will act on these petitions within 30 days of receipt.

b. Uniform Design

The second element of today's design criteria is a uniform design standard for landfill designs in States without approved programs. In selecting a uniform design, EPA's goal was to identify one that would provide adequate protection in all locations, including poor locations. In the preamble to the proposal, EPA requested comment on a uniform design approach that would consist of a composite liner and leachate collection system. The suggested composite liner system consisted of an upper flexible membrane liner and a lower soil layer at least three feet thick with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. The leachate collection system would need to be constructed to maintain less than 30 cm depth of leachate over the liner. EPA considered comments on this design in selecting today's final approach.

Commenters suggested a variety of uniform designs. These suggestions included (1) double liner systems identical to those required for hazardous waste disposal facilities under subtitle C of RCRA, (2) composite liner system similar to that described above, and (3) a single liner of either natural or artificial material with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. In addition, commenters suggested a composite liner system for MSWLFs located in Category IV (poor locations) under the categorical scheme.

While EPA recognizes that subtitle C double liner systems would provide added protection, EPA's Regulatory Impact Analysis (see section III.B of today's preamble) indicates that requiring such systems at all new MSWLFs and lateral expansions would impose high costs on communities, and would contribute significantly to causing today's set of final requirements to be beyond the practicable capability of owners and operators. For a typical MSWLF, EPA estimates that a subtitle C liner system would cost nearly 75 percent more than a composite liner system. Therefore, the Agency rejected the subtitle C design approach for MSWLFs.

EPA also rejected the third option suggested (i.e., single liner) because the Agency believes that both a flexible membrane liner (FML) and a compacted soil component are necessary to ensure adequate protection in poor locations. (Of course, in good locations, such alternative designs may meet today's performance criteria described below.) The upper FML component provides a highly impermeable layer to maximize leachate collection and removal, while the lower soil component serves as a back up in the event of FML liner failure.

The Agency believes the second option, a composite liner system, encompasses the essential components for a protective uniform design standard for MSWLFs. Today's final rule adopts the system described by EPA in the preamble to the proposed rule with two modifications. First, today's rule clarifies that the FML must have a minimum thickness of 30-mil, or if high density polyethylene (HDPE) is used, a minimum thickness of 60 mil. Based on EPA's experience with these liner materials, these are the minimum thicknesses necessary to ensure adequate liner performance, including being able to withstand the stress of construction and to ensure that adequate seams can be made (see U.S. EPA, RREL, Lining of Waste Containment and Other Impoundment Facilities. EPA/600/2–88/052. September 1988).

Second, today's rule specifies a minimum lower soil component thickness of two feet rather than three feet, which is required for hazardous waste disposal facilities. The Agency's most recent data indicate: (1) With sound construction practices, a two foot thick soil liner can be constructed with a hydraulic conductivity of 1×10^{-7} cm/sec; (2) soil liners less than two feet thick have a high probability of having a hydraulic conductivity greater than 1×10^{-7} cm/sec.; and (3) for composite liners, an extra foot of thickness (i.e., three foot versus two foot thickness) generally provides little improvement in liner performance, but may be appropriate to add as a "factor of safety" in certain cases. (see Note on Thickness of Compacted Soil Liners, Daniel, D.E., April 9, 1990).

EPA believes that requiring this "factor of safety" is appropriate as part of the liner system for hazardous waste disposal facilities, but not for MSWLFs. In comparison to hazardous waste disposal facilities, MSWLFs are located and needed in every region of the country. In some of these locations, clay materials for a soil liner are unavailable locally and must be shipped in from long distances. In many cases, shipping these materials in is very expensive for the community. While these communities will have the opportunity to use a site-specific design, as described above, increasing the thickness of the soil component of the composite liner would likely make the composite liner option prohibitively expensive for these communities. Even assuming minimal shipping costs, EPA estimates that requiring an additional one foot "factor of safety" would increase the cost of a composite liner for a typical MSWLF by nearly 25 percent. Given the unique characteristics of MSWLFs, EPA believes a two foot minimum soil layer provides the best balance between protection of human health and the environment and the practicable capabilities of MSWLF owners and operators.

Appendix F—Supplemental Information for Subpart E—Ground-Water Monitoring and Corrective Action

1. Section 258.50 Applicability

a. Suspension of Ground-Water Monitoring Requirements

Today's final ground-water monitoring and corrective action requirements apply to the owners and operators of all new and existing MSWLFs that do not qualify for the small community exemption. However, the Agency recognizes that certain hydrogeologic settings may preclude the migration of hazardous constituents from MSWLFs to ground-water resources. In the preamble to the proposed rule, the Agency stated that requiring ground-water monitoring in these settings would place an additional financial burden on owners and operators and would provide little or no additional protection to human health and the environment. Therefore, the proposed rule allowed suspension of ground-water monitoring requirements in §§ 258.51 through 258.55 for a MSWLF unit upon demonstration by the owner or operator that there is no potential for migration of hazardous constituents from the landfill unit to the uppermost aquifer during the active life, closure, or post-closure periods. The proposed rule required that the demonstration be certified by a qualified geologist or geotechnical engineer.

The Agency received a few comments regarding the practicality of the waiver. Commenters noted that it would be virtually impossible and/or very expensive to make the demonstration of no potential for migration. Several commenters also questioned the meaning of the words "no potential for migration" in § 256.50(b). Many felt that a change in the wording of the rule is necessary because, if strictly interpreted, it is impossible to demonstrate "no potential" for migration.

The Agency agrees with the commenters that it will be difficult for many facilities to meet the "no potential for migration" standard in the regulations though it does not agree that it is impossible. The Agency reminds commenters that the "no migration" waiver has been a component of the subtitle C groundwater monitoring program for many years. The Agency stresses that the suspension of monitoring requirements is intended only for those MSWLFs that are located in hydrogeologic settings in which hazardous constituents will not migrate to ground water during the active life of the unit, closure, and post-closure periods. As stated in the proposal, the Agency believes that these cases will be rare. The Agency also understands that the demonstration of no potential for migration may be difficult and costly because of the high degree of confidence necessary in the demonstration before an exemption will be allowed. EPA encourages MSWLF owners and operators to carefully consider their chances to obtain a suspension before attempting such a demonstration.

Other commenters suggested that the Agency consider limiting the stringency and term of the suspension so that an MSWLF owner or operator would have to make periodic demonstrations to retain the suspension. The Agency decided against limiting the term of the monitoring suspension by requiring periodic demonstrations every five or ten years. EPA believes that periodic demonstrations are not necessary because the demonstration required under this program must be so rigorous that no potential for migration is ensured for the active life plus the closure, and post-closure periods. Additionally, the Agency believes that the costs associated with continual re-application for the suspension would outweigh the benefits associated with it.

Several commenters requested that EPA establish additional conditions under which ground-water monitoring would be unnecessary or under which a suspension of ground-water monitoring requirements is warranted. These commenters suggested the following additional conditions be included: (1) Remote areas, including areas where there is great distance to (drinking) water wells; (2) extremely dry areas with little rainfall and great depths to ground water; (3) areas where ground water is not potable, is unusable, is of low value, or is classified as class III ground water; (4) areas underlain by unfractured bedrock or by thick sections of impermeable or slightly permeable soils or geologic materials; (5) areas where travel time calculations indicate little or no threat to human health or the environment; and (6) aquifers lacking reasonable quantity or recharge characteristics rendering any potential use unlikely.

The Agency considered these comments and believes that owners and operators of MSWLFs with some of the specified conditions, such as extremely dry areas or slow time of travel areas, might be able to demonstrate no potential for migration under § 258.50(b). However, EPA does not believe that the current ground water quality or potential future use of water is an appropriate factor for consideration in granting exemptions from ground water monitoring. EPA believes it is important to monitor for contamination at the relevant point of compliance regardless of the quality or anticipated future use of the ground water. Such considerations are more appropriately factored into determining the appropriate frequency of monitoring and the proper levels and schedule for remedy implementation for ground water cleanup or whether clean up requirements should be waived by an approved State (found in § 258.57). Furthermore, HSWA requires EPA to include in the revisions to section 4010 guidelines for ground-water monitoring, as necessary, to detect contamination. Therefore, today's final rule does not provide for waivers from ground-water monitoring requirements except where the owner or operator in an approved State can demonstrate no potential for migration of hazardous constituents to the uppermost aquifer during the active life of the unit, closure, or post-closure periods.

After consideration of the above comments, the Agency decided to promulgate § 258.50(b), as proposed, with four modifications. First, the suspension of ground-water monitoring requirements in §§ 258.51 through 258.55 is available only for owners and operators of landfills located in approved States. Owners and operators of MSWLFs not located in approved States will not be eligible for this waiver and will be required to comply with all ground-water monitoring requirements. The Agency has limited the availability of the waiver to approved States because the Agency recognizes the need for the State to review a no-migration demonstration prior to granting a waiver from ground-water monitoring.

Second, in response to comments discussed below, the final rule requires demonstrations of no potential for migration to be supported by both site-specific data and predictions that maximize contaminant migration. The proposed rule required that the demonstration of no potential for migration be based on site-specific hydrogeologic information or, if detailed data were unavailable, the owner or operator could make the demonstration based solely on predictions using assumptions that maximize the rate of hazardous constituent migration.

Two commenters objected to the use of predictions in establishing the demonstration of no potential for migration. Both commenters remarked that the suspension should not be allowed if site-specific data was not available. One commenter added that site-specific data must be used in a

water balance or recharge model to determine the potential for migration of hazardous constituents. The Agency agrees with the commenters and is requiring in today's final rule that the demonstration of no potential for migration be based on actual field data collected at the site. Field testing is necessary to establish the site's hydrogeological characteristics and should include an evaluation of unsaturated and saturated zone characteristics to ascertain the flow rate and pathway by which contaminants will migrate to ground water.

The Agency also agrees with the commenter that modeling is useful for assessing and verifying the potential for migration of hazardous constituents. Furthermore, the Agency believes that predictions (i.e., models) should be based on actual field collected data to adequately predict potential ground-water contamination. Therefore, today's final rule requires the owner or operator to use both field collected data and predictions that maximize contaminant migration for demonstrating no potential for migration.

Another commenter remarked that the term "adequate margin of safety" in the proposed rule is too subjective. Because the final rule requires predictions that maximize contaminant migration in all demonstrations, the term "adequate margin of safety" is unnecessary. The Agency believes that using predictions or models that maximize contaminant migration and consider impacts on human health and the environment will, in itself, provide an adequate margin of safety in protecting human health and the environment. Therefore, the Agency has deleted this phrase from today's final rule.

Third, today's final rule requires no potential for migration demonstrations to be certified by a "qualified ground-water scientist and approved by the Director of an approved State." The proposed rule required the demonstration to be certified by a "qualified geologist or geotechnical engineer." Comments received and the Agency's rational for the final provision are discussed later in the preamble.

In summary, today's final rule allows an approved State to suspend ground-water monitoring requirements (§§ 258.51 through 258.55) if the owner or operator can demonstrate that there is no potential for migration of hazardous constituents from that unit to the uppermost aquifer during the active life of the unit including the closure and the post-closure periods. This demonstration must be certified by a qualified ground-water scientist and be based on site-specific, field collected measurements, sampling, and analysis of physical, chemical, and biological processes affecting contaminant fate and transport. The demonstration also must include contaminant fate and transport predictions that maximize contaminant migration and consider impacts on human health and the environment. Procedures for conducting these evaluations can be found in the OSWER Ground-Water Monitoring Guidance Document for Owners and Operators of Interim Status Facilities (1983).

b. Compliance Schedule

As a result of shortages in qualified technical personnel and licensed drilling companies, the Agency proposed to gradually phase in the requirements to ease the burden of installing ground-water monitoring systems at all new and existing MSWLFs. In the proposed rule, the Agency allowed States to set a compliance schedule for installing ground-water monitoring systems at existing facilities and provided a "fall-back" schedule for States choosing not to set a schedule. The fall-back schedule was based on distance to the nearest drinking water intake. For States choosing to set a schedule, the Agency set requirements for the percentage of units that had to be in compliance. These requirements were: (1) Within two years—25 percent of the units had to be in compliance; (2) within three years—50 percent of the units had to be in compliance; (3) within four years—75 percent of the units had to be in compliance; and (4) all units had to be in compliance within five years. States were to set schedules to meet these requirements based on the potential risks posed by facilities after evaluating the proximity of human and environment receptors, design of the unit, age of the unit, and resource value of the underlying aquifer.

The Agency received several comments in favor of the five year phase in. One commenter in particular, noted that in addition to the technical demands placed on hydrogeologists and drilling companies by the subtitle D program, other regulatory programs (CERCLA, State clean-up programs, the Underground Storage Tank program, and RCRA's subtitle C monitoring and corrective action program) also will significantly impact the availability of competent consultants. This same commenter requested that the phase in period be extended to ten years. Another commenter, though understanding of the constraints imposed by the availability of competent hydrogeologists and drilling companies, was opposed to the length of the Agency's schedule, but did not suggest an alternative. The Agency also received a few comments opposing the phase in period. These commenters believe that a phase in period will allow facilities to delay installation of ground-water monitoring systems without justification.

In response to these commenters, EPA carefully reevaluated the five year phase-in period for ground-water monitoring to determine if it was appropriate and necessary. In EPA's Report to Congress on solid waste disposal (1980), it was reported that approximately 19 percent of the existing landfills monitor ground water. This means that approximately 4,800 of the nearly 6000 existing landfills will need to install ground-water monitoring systems for the first time. The Agency recognizes that installing new groundwater monitoring systems will take time, especially since the pool of available, qualified ground-water scientists is limited. Assessing site-specific hydrogeologic conditions and preparing a hydrogeological report with findings and recommendations must be completed before well construction can begin.

The Agency estimated that there are currently 271 firms "certified" (National Water Well Association certification) to install ground-water monitoring wells. If each of these 271 drilling firms can install monitoring wells at 18 of 4800 MSWLFs and if, for example, four monitoring wells are installed at each MSWLF (however, many more may be needed), each of the drilling contractors will install 72 wells. Again, EPA realizes that drilling firms vary widely in size, in their ability to accept additional work, and in their capacity and desire to grow. EPA also realizes that drilling firms and MSWLFs are not evenly distributed across geographical areas. However, in estimating the amount of time it would take for the 271 drilling firms to install the minimum number of monitoring wells at all 4800 facilities, EPA decided that an average of 72 wells per drilling firm was a reasonable estimate.

EPA estimated the time it would take for one firm to install 72 monitoring wells for each of three different size drilling firms. EPA assumed, for each firm size, that each drilling firm currently has the capacity to install additional monitoring wells above and beyond its current demand. EPA then assumed that in the first year after publication of today's final rule, all of the drilling firms' additional capacity is dedicated to installing monitoring wells for the MSWLF program. EPA then assumed that in each of the following

years, the total number of wells that a drilling firm can install increases by ten percent over current capacity. EPA also assumed that after the first year, one half of this additional capacity will be used to install wells at MSWLFs.

Given these assumptions, EPA then estimated the time needed for each of the three different sized firms to install 72 monitoring wells. A firm that is currently installing 2400 monitoring wells a year and has additional capacity to install 20 percent more wells, will require less than one year to install 72 wells; a firm that is currently installing 35 monitoring wells a year, with additional capacity to install 80 percent more wells, will also require less than a year to install 72 wells; however, a firm that is installing 150 monitoring wells a year and has no additional capacity will require over four years to install 72 monitoring wells.

In addition to this varying capacity of drilling firms, it is also the Agency's experience that it may take more than six months for a facility owner or operator to retain a qualified hydrogeologist and drilling firm, implement initial site characterization activities, draft plans and implement final drilling programs, perform site characterization activities, and prepare sampling and analysis plans. Based on the Agency's evaluation of each of the considerations presented above, the Agency concludes that approximately five years will be necessary for the installation of ground-water monitoring systems at all landfills.

Commenters requested both longer and shorter compliance schedules and noted that the proposal was unclear as to whether the compliance schedule started on the date of publication or the effective date. This would yield either a five year or a six and half year time for compliance. The above analysis indicates that the shorter schedule (i.e., a five year compliance schedule beginning at the date of publication) is feasible. Therefore, the Agency has clarified in today's rule that the five year compliance schedule for installing ground-water monitoring systems begins on the date of publication (i.e., today's date).

As part of the self-implementing approach in today's final rule, the Agency is promulgating a set compliance schedule for the phase-in while still allowing approved States to implement an alternative schedule. Within five years of the publication date of today's final rule, all existing units must be in compliance with ground-water monitoring requirements. New units must comply with the ground-water monitoring requirements before accepting waste because the need for ground-water monitoring systems can be anticipated in the planning process. Owners and operators of existing units, and lateral expansions of existing units, are required to comply with the ground-water monitoring requirements according to the following schedule: (1) Less than one mile from a drinking water intake—within three years; (2) greater than one mile but less than two miles—within four years; (3) greater than two miles—within five years. While this method does not assess the risk of individual landfills, it is objective and it will be easy for owners and operators to determine. This schedule was originally proposed as a "fall-back" schedule if a State chose not to set a compliance schedule.

In general, lateral expansions must meet the requirements of today's final rule (e.g., ground-water monitoring, liner, and leachate collection system) prior to acceptance of waste into the unit. The Agency is allowing ground-water monitoring requirements to be phased-in at existing units because of the lack of qualified drilling firms and hydrogeologists. For this same reason, the Agency believes ground-water monitoring at lateral expansions must also be phased in. Therefore, the Agency has decided to also phase-in the ground-water monitoring requirements for lateral expansions of existing units on the same schedule as the existing unit.

Furthermore, the Agency believes that Congress has expressed a desire to avert serious disruptions of the solid waste disposal industry. The Agency believes that disruptions in solid waste disposal could occur if existing units cannot laterally expand until ground-water monitoring systems are in place, limiting the much needed capacity created by lateral expansions. The Agency also recognizes that it is more practical to design one system encompassing both the existing unit and the lateral expansion. This approach will allow the owner or operator to utilize all of the information generated during site characterization and design a ground-water monitoring system in view of all of the conditions that exist at the facility.

As discussed earlier in the preamble, the Agency has chosen 24 months from today as the effective date for most of the standards promulgated. However, in one departure from the 24 month effective date, EPA is promulgating a phase-in of the ground-water monitoring requirements over a five-year time period beginning on the date of rule publication.

The statutory language authorizing the promulgation of revised criteria for subtitle D facilities receiving household hazardous and small quantity generator wastes does not specify an effective date. Thus, the Agency believes that is has broad discretion in determining the most appropriate effective date for different provisions of the revised criteria. Congress, in the legislative history to subtitle D, recognized that many facilities subject to the revised criteria may have difficulty meeting all requirements by a particular compliance date due to the "practicable capabilities" of facilities, which EPA has interpreted to refer to cost and technical considerations. Thus the legislative history explicitly suggests that EPA phase-in the revised criteria over time. During floor debate, Senator Randolph stated, "Requirements imposed on facilities, may vary from those for subtitle C facilities, however, and still meet this standard (protection of human health and the environment). They may be phased in over time, as the Administrator deems appropriate, to take account of the practicable capability of the facilities covered." 130 Cong. Rec. S 13814 (October 5, 1984).

While the Agency also recognizes that the legislative history indicates that Congress did not favor the phase-in of the ground-water monitoring requirements, it does not view this as a bar to such a phase-in. First, this indication is limited to the legislative history. The legislative history on this issue also is found in remarks by Senator Randolph, where he stated, "The Administrator could phase in new requirements other than ground-water monitoring and corrective action over time." *Id.* The statutory language, however, does not contain any language that would prevent the Agency from phasing in the ground-water monitoring requirements. Second, this statement in the legislative history must be read in the context of Congress' general approval of a phase-in of the revised criteria where the "practicable capabilities" of the owners and operators is at issue. Finally, the facts motivating the Agency to phase-in the ground-water monitoring requirements must be considered. As explained earlier, considering the substantial number of MSWLFs that need to have wells installed and the estimated number of firms capable in installing ground-water wells, EPA believes that it is physically impossible for all wells to be installed at all MSWLFs by the effective date of today's rule.

As discussed earlier, the proposed rule provided targets and evaluation factors for States choosing to set compliance schedules. One commenter

requested that the Agency provide more flexibility to States in setting a compliance schedule. Another commenter noted that the five year schedule does not provide States any support to achieving compliance at MSWLFs that do not meet current State ground-water standards. The commenter requested that the rule direct a more aggressive compliance schedule and refer to more stringent State rules where they apply. The Agency also received comments on the methodology to be used by States in setting facility compliance schedules for implementing monitoring programs. One commenter remarked that States should set priorities by relying upon the categorical location criteria (precipitation and time of travel) as well as the factors for identifying risk (e.g., characteristics of the leachate, designations of local water use, documented adverse impacts, and use of containment and mitigation technology). The commenter also suggested that special emphasis be placed on the DRASTIC index score, a standardized system for evaluating ground-water pollution potential using hydrogeologic settings. Similarly, another commenter suggested that schedules be based on a risk assessment of facilities focusing on an analysis of key pathways to sensitive receptors and activities (i.e., drinking water sources; exposed populations; sensitive biologic communities; and past, current, and future use of the site and adjacent property).

In response to comments requesting more flexibility for States, today's final rule allows approved States to establish an alternative compliance schedule for phasing in the ground-water monitoring requirements at existing units and lateral expansions of existing units. These alternative schedules must ensure that 50 percent of all existing units are in compliance within three years and all existing units are in compliance within five years. In setting an alternative compliance schedule approved States must consider the potential risks posed by each facility to human health and the environment based on the factors specified in § 258.50(d). This approach for approved States is consistent with the proposal except that the Agency has deleted the interim requirements of 25 percent compliance within two years and 75 percent compliance within four years. These interim milestones were dropped in response to commenters request for additional State flexibility on this issue. Though these two interim requirements have not been included in today's final rule, the Agency does not believe that any adverse impacts to human health and the environment will result. The final rule also allows approved States to set alternative recordkeeping locations and alternative schedules for recordkeeping and notification requirements.

In considering the request for more aggressive compliance schedules, the Agency notes that States are not precluded by this section from requiring installation of ground-water monitoring systems on a faster schedule.

The Agency considered the commenter's request to use DRASTIC scores, but believes that States may not have all the information readily available to score facilities. DRASTIC is a method used for systematically evaluating and numerically scoring the ground-water pollution potential of any hydrogeologic setting in the United States. Scores are based on ratings of the following factors: Depth to water, net recharge, aquifer media, soil media, topography, impact of vadose zone media, and hydraulic conductivity. The purpose of the factors to assess relative risk is to allow for quicker installation of monitoring systems at those facilities that pose the greatest risks to human health and the environment. The Agency does not believe that a full hydrogeologic assessment is necessary to rank facilities, and therefore, has not adopted the use of DRASTIC into today's final rule.

The Agency considered the other risk factors suggested by commenters and believes that the majority of the specific factors suggested by commenters fall into the broader categories proposed by the Agency. For example, designations of local water use and drinking water sources could be considered part of the resource value of the aquifer. Similarly, exposed population and sensitive biologic communities fall under the first factor, proximity of human and environmental receptors. The Agency does not believe that requiring information on the additional suggested factors will enable approved States to more accurately assess relative risks posed by facilities. For this reason, the Agency believes that the factors provided in today's final rule, (§ 258.50(d)), are sufficient for assessing risks posed by facilities. These factors include: (1) Proximity of human and environmental receptors; (2) design of the unit; (3) age of the unit; (4) the size of the unit; and (5) resource value of the underlying aquifer including (i) current and future uses; (ii) proximity and withdrawal rate of users; and (iii) ground-water quality and quantity. This list is the same as that originally proposed except for the addition of two factors: (1) Waste types and quantities, including sewage sludge and (2) unit size.

Waste type and quantity, including sewage sludge, was added as an additional factor because commenters suggested that waste characteristics may be an important factor in assessing the potential risk of a facility. Size was added as a factor for consideration in today's final rule because of the comments received requesting relief for small communities. As discussed earlier in the preamble, the Agency has allowed approved States the discretion to exempt owners and operators of small landfills from the ground-water monitoring and corrective action requirements as long as certain conditions are met.

However, the Agency understands that many small communities not meeting the criteria defining small communities in today's final rule may need more time to locate expertise and acquire funding for installation of ground-water monitoring systems. Therefore, the Agency is allowing approved States to consider the impacts to small communities during the phase in period. Approved States may establish lower priorities for small communities by applying the criteria set forth in §§ 258.50 (d)(1), (d)(4), and (d)(5)(ii). These are the risk factors considering the proximity of human and environmental receptors, the size of the unit, and the proximity and withdrawal rate of users. Approved States will always have the option, however, to immediately address those MSWLFs with environmental problems that are serving small communities.

c. Professional Certification

The proposed rule required that the owner or operator obtain certification from an independent professional in at least two instances: The demonstration of no potential for migration (by a qualified geologist or geotechnical engineer) and certification of remedy completion (an independent professional skilled in the appropriate technical discipline). Because the Agency is providing for self-implementation of many portions of today's final rule, the Agency believes it is necessary to have an independent party review, and certify certain other programs or demonstrations required by today's final rule. As one commenter noted, few owners and operators of MSWLFs have the technical capability to comply with the proposed ground-water monitoring and corrective action requirements without the support of professional hydrogeologic consultants.

Therefore, five provisions of today's final rule require certification by an independent, qualified ground-water scientist: (1) No potential for migration demonstration (§ 258.50(b)); (2) number, spacing, and depths of monitoring systems (§ 258.51(d)); (3) determination that contamination was caused by another source or that statistically significant increase resulted from an error in sampling, analysis, or evaluation (§§ 258.54(c)(3) and 258.55(h)(2)); (4) determination that compliance with a remedy requirement is not technically practicable (§ 258.58(c)(1)); and (5) completion of remedy (§ 258.58(f)).

EPA recognizes that approved States may have hydrogeologists fully capable of reviewing and approving the ground-water monitoring and corrective action demonstrations or programs described above. Therefore, today's rule allows the owner or operator to obtain the approval of the Director of an approved State in lieu of the certification of an independent, qualified ground-water scientist.

One commenter suggested that States take the responsibility for establishing the criteria for licensing hydrogeologists because of the reliance of MSWLF owners and operators on the advice of consultants and hydrogeologists in implementing the regulations. The commenter stated that the variability of the opinions and approaches among different professionals would be a barrier to implementation. A second commenter suggested that there should be minimum professional requirements. The Agency agrees that those professionals certifying the requirements of today's final rule should meet certain qualifications. The Agency has defined a "qualified ground-water scientist" to be a scientist or engineer who has received a baccalaureate or post-graduate degree in the natural sciences or engineering and has sufficient training and experience in ground-water hydrology and related fields as may be demonstrated by State registration, professional certification, or completion of accredited university programs that enable that individual to make sound professional judgments regarding ground-water monitoring, contaminant fate and transport, and corrective action. This requirement is included at § 258.50(f). The Agency believes that specialized coursework and training should include, at a minimum, physical geology, ground-water hydrology or hydrogeology, and environmental chemistry (e.g., soil chemistry or low temperature geochemistry). Some national organizations, such as the American Institute of Hydrology and the National Water Well Association, currently certify or register ground-water professionals. States may of course establish more stringent requirements for these professionals including mandatory licensing or certification.

2. Sections 258.51–58 Overview of Ground-Water Monitoring and Corrective Action Requirements

The Agency received numerous comments on the ground-water monitoring and corrective action requirements presented in the proposed rule. In general, most commenters requested that the rule be made simpler, less costly, and provide States with more flexibility. In responding to the commenters, the Agency has made a significant number of changes from the proposed rule. Among these changes are the elimination of the trigger level and a general reorganization and streamlining of the ground-water monitoring and corrective action requirements.

Section VII of today's preamble provides a summary of today's final rule, including the ground-water monitoring and corrective action provisions. As indicated in this summary, EPA has reorganized the ground-water monitoring and corrective action requirements into four major groupings: Establish Program, Detection Monitoring, Assessment Monitoring, and Corrective Action. The following more fully discusses each of these sections, including specific comments received, and the rationale for the final approach.

Establish Program

The following sections discuss the requirements for ground-water monitoring systems (§ 258.51) and the procedures for sampling and analysis that must be used by owners and operators (§ 258.53). As discussed later in the preamble, § 258.52, which pertained to the establishment of trigger levels for the appendix II constituents, was deleted.

3. Section 258.51 Ground-Water Monitoring Systems

Section 258.51 of the proposed rule specified requirements pertaining to appropriate methods for designing and installing ground-water monitoring systems. Recognizing the similar intent of ground-water monitoring under subtitle C and subtitle D, the Agency proposed performance standards for ground-water monitoring system design that reflected those specified for hazardous waste disposal facilities in 40 CFR part 264. The Agency proposed these requirements to ensure that consistent, reliable ground-water monitoring data are collected at all MSWLFs.

The proposed rule required that monitoring wells be placed at the closest practical distance from the waste management unit boundary or the alternative boundary designated by the State under § 258.40. The proposed rule also allowed the State to designate another appropriate location for down-gradient wells where subsurface conditions cause hazardous constituents to migrate past the boundary before descending into the uppermost aquifer. The system had to consist of a sufficient number of wells at appropriate locations and depths to yield samples that represent background ground-water quality and the quality of ground water passing the unit or alternative boundary. Individual wells had to be constructed to prevent contamination of ground water and be operated and maintained so as to perform to design specifications throughout the life of the monitoring program. Wells had to be cased in a manner maintaining the integrity of the monitoring well bore hole and this casing had to be screened and packed with gravel or sand, where necessary, to enable collection of ground-water samples. The annular space above the sampling depth had to be sealed to prevent contamination of samples and the ground water. The State could allow a multi-unit ground-water monitoring system at facilities that have more than one landfill unit provided that the multi-unit ground-water monitoring system would be as protective of human health and the environment as individual monitoring systems for each unit.

Because hydrogeologic conditions vary widely from one site to another, the proposal did not establish requirements specifying the exact number, location, and depth of monitoring wells needed to adequately monitor ground water in the aquifer. A few commenters supported this approach, while another commenter argued that EPA should specify a minimum number of wells. The commenter, however, did not suggest the necessary minimum number of wells. The commenter was concerned that the proposed rule might encourage the installation of an excessive or inappropriately large number of wells. EPA disagrees that wording of today's final rule directs owners and operators to install an excessive or inappropriately large number of wells. The Agency still believes it is important to provide owners and operators flexibility in determining the appropriate number of wells to meet the performance standard, and therefore

has retained the proposed approach in today's final rule.

The proposal included a provision that the number, spacing, and depth of monitoring systems be based on site-specific technical information including a thorough characterization of: (1) Aquifer thickness, ground-water flow rate, and ground-water flow direction; and (2) the saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, including, but not limited to: thicknesses, stratigraphy, lithology, hydraulic conductivities, and porosities. All commenters generally supported this provision, although a few suggested certain improvements. One commenter believed that further improvements could be made in the site characterization process and that the ground-water provisions needed to be far more explicit than proposed. Specifically, the commenter believed that proposed § 258.51(e) should require that the following specific characterization requirements be performed prior to final ground-water monitoring well installation: (1) Installation of soil/rock borings; (2) determination of ground-water flow paths and rates (including ground-water level measurements, vertical flow components, seasonal and temporal variation in ground-water flow, and hydraulic conductivities); (3) identification of the uppermost aquifer, especially its lower boundary and any hydraulic interconnection; and (4) the use of confirmatory analyses.

Another commenter believed that § 258.51(e) should be clarified to preclude multi-level detection systems. The commenter believed that aquifer thickness, flow rate, flow direction, and the characteristics of the material overlying the aquifer were important factors in developing ground-water monitoring systems. The commenter believed that for the purposes of detection monitoring, a flow path analysis could define a single location and single elevation or depth of well screen which would meet the RCRA criteria for "immediate" detection of contamination from a facility.

In response to the first suggestion, the Agency agrees that site hydrogeology must be thoroughly characterized and the lower boundary of the uppermost aquifer be defined. Such information will enable the MSWLF owner or operator to identify potential pathways of contaminant migration and determine whether the complete vertical extent of the uppermost aquifer, including hydraulically interconnected zones of saturation, is being monitored. (See the technical guidance for this rule that is discussed in section VI of this preamble.) Therefore, the Agency expanded the factors for consideration in determining the number, spacing, and depth of monitoring wells to include requirements to (1) thoroughly characterize ground-water flow direction, including seasonal and temporal ground-water flow, and to (2) thoroughly characterize not only the saturated and unsaturated geologic and fill materials overlying the uppermost aquifer, but those that comprise the uppermost aquifer and the confining unit which defines the lower boundary of the uppermost aquifer as well.

In response to the comments regarding multi-level detection systems, the Agency believes that the use of these systems is often necessary and desirable to adequately detect potential ground-water contamination. Ground-water contamination may not be detected by wells screened at a single elevation under certain circumstances including landfills where: (1) Both sinking and floating contaminants could potentially be detected; (2) multiple, interconnected aquifers exist; (3) aquifers are variable in lithology, or contain discontinuous structures; or (4) discrete zones of fracture exist.

The Agency would like to emphasize that all components of any ground-water monitoring program, from site characterization, well location and installation, to sample analysis and data evaluation, must follow technically sound procedures to achieve high data quality objectives and, consequently, reliable and accurate results. Some EPA publications that address data quality objectives for ground-water monitoring include: RCRA Ground-Water Monitoring Technical Enforcement Guidance Document (September, 1986), Test Methods for Evaluating Solid Waste (SW–846) (3rd Edition, November, 1986), RCRA Facility Investigation Guidance (May, 1989), and Statistical Analysis of Ground-Water Monitoring Data at RCRA Facilities (April, 1989).

The rule as originally proposed required substantial State interaction in designing and approving the ground-water monitoring system. However, because today's final rule is self-implementing, the Agency has instead required certification of monitoring systems to ensure that such systems have been adequately designed and installed. Therefore, § 258.51(d)(2) of today's final rule requires that the ground-water monitoring system be certified by a qualified ground-water scientist as defined in § 258.50(f). This certification must be placed in the facility's operating record and the State director must be notified within 14 days.

In addition to those comments discussed above, the Agency received comments concerning the uppermost aquifer, determination of background ground-water quality, multi-unit ground-water monitoring systems, and the alternative boundary. These comments are discussed individually below.

a. Uppermost Aquifer

The Agency received a number of comments specifically addressing the Agency's use of the term "uppermost aquifer." The commenters' opinions regarding monitoring of the uppermost aquifer varied greatly. A few commenters expressed confusion with the definition of uppermost aquifer since it was not explicitly stated in the rule. A number of commenters objected to the Agency's emphasis on monitoring solely the uppermost aquifer. Some of these commenters asserted that if zones (both saturated and unsaturated) above the uppermost aquifer are contaminated, then impacts to the uppermost aquifer are inevitable. Accordingly, these commenters argued that requiring monitoring of any ground-water, instead of solely the uppermost aquifer, would provide for the earliest detection of contamination. Other commenters believed that the Agency should require monitoring of aquifers below the uppermost aquifer because ground-water contamination may not be detected in the uppermost aquifer before migrating to a lower aquifer or because the uppermost aquifer may be hydraulically connected to lower aquifers.

In contrast to the above opinions, several commenters were concerned that the rule may require monitoring of saturated or unsaturated zones (e.g., aquitard) that may not satisfy the definition of "aquifer." In their opinion, the ground-water monitoring program should focus on monitoring only aquifers that may provide drinking water or other beneficial uses.

The Agency agrees with the commenters concerns regarding the need for a definition of "uppermost aquifer." In response to these concerns, the Agency is adopting the definition of uppermost aquifer in § 260.10 for today's final rule at § 258.2. The proposed rule defined an aquifer as: A geological formation, group of formations, or portion of a formation capable of yielding significant quantities of ground water to wells or springs which is consistent with the definition of aquifer given in § 260.10. The Agency's position

has always been that the definition of uppermost aquifer should address situations in which the uppermost aquifer is interconnected with lower aquifers, and therefore, the term "uppermost aquifer" is defined in § 260.10 and in today's final rule as: the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer, within the facility's property boundary. If lower zones of saturation are hydraulically connected to the uppermost aquifer, they collectively comprise the uppermost aquifer. Consequently, a number of facilities will be required to monitor lower aquifers that are hydraulically connected to the aquifer nearest the natural ground surface.

The Agency currently is evaluating the appropriate scope of ground-water monitoring requirements at subtitle C facilities. On July 26, 1988, the Agency proposed to amend 40 CFR part 264, subpart F to give the Regional Administrator explicit authority to require monitoring in any zones of saturation including saturated zones that are not part of the uppermost aquifer (such as perched or intermittent water tables), as well as monitoring in unsaturated zones for determining early migration of contaminants (53 FR 28160). The Agency currently is evaluating comments that were received on that proposal and is preparing a final rule. After the final rule is published, the Agency also will consider the appropriateness of proposing comparable changes to monitoring requirements in § 258.51 for municipal solid waste landfills. Today's final rule does not preclude States, however, from requiring monitoring in the unsaturated zone or in saturated areas in addition to the uppermost aquifer.

b. Determination of Background Ground-Water Quality

In the proposed rule, EPA allowed States to determine alternate background ground-water quality on a site-specific basis if true background ground-water quality could not be detected on site (§ 258.53(g)). The alternate background ground-water quality was to be based on monitoring data from the uppermost aquifer that were available to the State. In the preamble to the proposed rule, the Agency elaborated that background ground-water quality should be based on actual monitoring data from the aquifer of concern.

A number of commenters stated that § 258.53(g) of the proposed rule, which allowed the State to determine alternate background water quality based on wells in similar hydrogeologic areas, is inadequate. They contended that there are often no similar hydrogeologic areas that provide representative background water quality and that adjoining areas may be unrepresentative due to other activities in the area (e.g., irrigation and fertilization practices). Further, they contended that this provision does not provide any criteria, geological or hydrogeological, by which States can determine whether two areas are hydrogeologically similar. They believe such criteria are necessary since many factors, including aquifer lithology, will directly affect groundwater geochemistry.

Based on consideration of these comments, the Agency has deleted proposed § 258.53(g) from the final rule. The Agency initially proposed to not set the criteria to determine alternate background ground-water quality to provide States with maximum flexibility. However, the Agency agrees with commenters that the proposed § 258.53(g) was vague and believes that proposed § 258.53(f) (§ 258.51(a) in today's rule) provides owners and operators with the needed flexibility to determine background ground-water quality. Proposed § 258.53(f) allowed the owner or operator to establish ground-water quality at existing units based on sampling of wells that are not upgradient from the waste management area if: (1) Hydrogeologic conditions do not allow the owner or operator to determine what wells are upgradient; and (2) sampling at other wells will provide an indication of background ground-water quality that is as representative or more representative than that provided by upgradient. The Agency did not receive comments opposing proposed § 258.53(f) and has retained this provision in today's final rule (§ 258.51(a)(1) of today's final rule). This provision may be used when hydrogeologic conditions do not allow the owner or operator to determine which wells are hydraulically upgradient and when sampling at other wells will provide an indication of background ground-water quality that is equally or more representative than that provided by upgradient wells. Examples of such situations, as discussed in the background document for the proposed rule, include: (1) Waste management areas above ground-water mounds; (2) waste management areas located above aquifers in which ground-water flow directions change seasonally; (3) waste management areas located close to a property boundary that is in the upgradient direction; (4) waste management facilities containing significant amounts of immiscible contaminants with densities greater than or less than water; (5) waste management facilities located in areas where nearby surface water can influence ground-water flow directions (e.g., river floodplains); (6) waste management facilities located near intermittently or continuously used production wells; and (7) waste management facilities located in karst areas or faulted areas where fault zones may modify flow. In all cases, facilities should ensure wells are appropriately located and screened to allow determination of background ground-water quality that has not been affected by possible leakage from the landfill unit. The location of background wells also will be included in the certification required by § 258.51(d).

c. Multi-Unit Ground-Water Monitoring Systems

As previously discussed, the proposed rule allowed the State to approve grouping of landfill units for ground-water monitoring systems. The multi-unit ground-water monitoring system, however, had to be as protective of human health and the environment as individual monitoring systems for each unit. The Agency recognizes that local conditions may make it difficult to install a monitoring system around each landfill unit.

The Agency did not receive any comments opposing this concept so it has been retained in § 258.51(b) of today's final rule. However, because the Agency is providing for the self-implementation of today's final rule, only approved States will be allowed to approve the use of multi-unit systems. Unless an approved State allows the grouping of units, the owner or operator will be required to install a ground-water monitoring system for each individual unit.

If used, the multi-unit system must be as protective of human health and the environment as individual monitoring systems for each unit. Because of general commenter concerns that States need more guidance in implementing today's final rule, the Agency added five factors for approved States to consider in approving the use of multi-unit systems. These factors, found in § 258.51(b), include: (1) Number, spacing, and orientation of units; (2) hydrogeologic setting; (3) site history; (4) engineering design of the units; and (5) type of waste handled. These factors are similar to those factors proposed for the Regional Administrator's consideration in approving a multi-unit ground-water monitoring system for hazardous waste

facilities regulated under subtitle C (53 FR 78162). The rationale for these factors is discussed in the preamble to the July 26, 1988 proposed rule (53 FR 78162).

Multi-unit monitoring systems also must consist of a sufficient number of wells, installed at appropriate locations and depths, to yield ground-water samples from the uppermost aquifer that represent the quality of background ground water and represent the quality of ground water passing the relevant point of compliance. As discussed below, § 258.51(a)(2) requires that the downgradient monitoring system be installed at the relevant point of compliance (not to exceed 150 meters from the unit on land owned by the owner or operator) designated by an approved State. In determining where to place monitoring wells in a multi-unit facility in compliance with § 258.51(a)(2), the approved State should draw an imaginary line around all units at the facility. This line would constitute the relevant point of compliance for a multi-unit system. Therefore, wells must be placed at this imaginary line. Of course, the approved State must first make the determination that it is appropriate and protective to use a multi-unit monitoring system based on the factors described above.

d. Ground-Water Monitoring and the Alternative Boundary

The proposed rule allowed the placement of monitoring wells at the closest practical distance from the waste management unit boundary or alternative boundary selected by the State under § 258.40(d). This ground-water monitoring performance standard was linked directly to the design goal of the landfill unit by requiring placement of the monitoring system so as to monitor the performance of the landfill design at the unit or alternative boundary. For example, if the unit was designed to meet the design goal at an alternative boundary, monitoring wells were to be installed at the alternative boundary.

The alternative boundary could be no more than 150 meters from the waste management unit boundary, and had to be on land owned by the MSWLF owner or operator. Under the proposal, States would be required to consider eight factors before establishing an alternative boundary: (1) The hydrogeologic characteristics of the facility and surrounding land; (2) the volume and physical and chemical characteristics of the leachate; (3) the quantity, quality, and direction of flow of ground water; (4) the proximity and withdrawal rate of the ground water users; (5) the availability of alternative drinking water supplies; (6) the existing quality of the ground water, including other sources of contamination and their cumulative impacts on the ground water; (7) public health, safety, and welfare effects; and (8) practicable capability of the owner or operator. The Agency's rationale for allowing an alternative boundary for meeting the design goal was to allow for consideration of the practicable capability of owners and operators by allowing contaminant concentrations to diminish due to degradation, dispersion, and attenuation. Its purpose was also to allow for greater State flexibility in setting design requirements.

The Agency received a number of comments regarding the alternative boundary designation which would permit ground-water monitoring wells to be placed at distances up to 150 meters from the waste management unit boundary. Several commenters asserted that the 150 meter boundary was overly conservative and too inflexible. A number of commenters suggested other locations for alternative boundaries including: the property boundary and unlimited locations, based on the risks posed by the facility. These arguments were countered, however, by other commenters who expressed concern that the allowable distance was excessive, would simply allow dilution of contamination, and would delay detection of contamination. Several of these commenters argued that monitoring wells should be placed at the waste management unit boundary.

The Agency recognizes that establishing the boundary designation for ground-water monitoring is an important feature of today's final rule, and may substantially influence the facility design and the types, timing, and costs of corrective action. Therefore, the Agency carefully reexamined the proposed approach to address concerns that this approach was either too stringent or not protective.

The Agency disagrees with commenters who argued that the proposed approach was unnecessarily stringent. In developing the proposed rule, EPA considered setting the alternative boundary at the property boundary or not stipulating any limit. These options obviously would provide the greatest flexibility in addressing the practicable capability of owners and operators of MSWLFs. However, due to the size of some MSWLF facilities, EPA is concerned that large expanses of ground water could be contaminated before detection and, therefore, circumvent the intent of this rule. Thus, the Agency believes it is essential to set a maximum distance limit for the alternative boundary (referred to in today's rule as the "relevant point of compliance") that would limit ground-water contamination, yet still provide some flexibility to owners and operators of MSWLFs. The Agency also specified in the proposed rule, and in today's final rule, that the alternative boundary (or the relevant point of compliance) must be located on property owned by the owner or operator to prevent contamination off site. The Agency believes this approach provides sufficient flexibility, while at the same time, limiting the area of contamination.

The Agency acknowledges that allowing the relevant point of compliance to be set at a point beyond the waste unit boundary would allow dilution or contamination in some cases and delay detection of contamination. Although EPA generally prefers the installation of ground-water monitoring wells at the waste management unit boundary to provide the earliest opportunity to detect contamination, EPA believes the unique characteristics of MSWLFs warrant the flexibility afforded by today's final rule. First, the technical and economic resources of MSWLF owners and operators is limited in many cases. Corrective action is a significant cost component of today's rule and providing flexibility on the boundary designation for ground-water monitoring can in some cases serve to reduce costs by allowing the owner or operator to take advantage of a limited dilution and treatment zone in the ground water. In addition, the owner or operator will be able to avoid overdesign and thus reduce costs.

Second, EPA expects that in most instances, there will be very little potential for human exposure to contaminated ground water that remains within the property line (and no more than 150 meters from the unit boundary) of a MSWLF. Most MSWLFs are owned by local governments, who should be able to control ground-water use within the facility boundary. Section 258.40(d) of today's final rule requires that the relevant point of compliance be approved by an approved State after consideration of a wide range of site-specific factors. This approach ensures that careful consideration is given before a relevant point of compliance is set.

EPA decided to retain the proposed site-specific factors in setting the relevant point of compliance. However, one of the factors used to establish a relevant point of compliance (factor 6) has been changed to reflect the

provisions outlined in EPA's 1991 Ground Water Task Force Report. This report calls for the enhanced role of the States in setting ground-water protection strategies to meet State-specific needs. As discussed in the preamble to today's rule, States may use ground-water classification and resource evaluations in making decisions regarding ground-water protection. Accordingly, factor 6 has been amended to include consideration of whether the ground water is currently or reasonably expected to be used for drinking water. EPA believes that this approach is protective of human health and environment, and provides the necessary flexibility to address the unique ground-water protection strategies of the States.

As mentioned above, the proposed rule also allowed for the placement of wells at the closest practical distance from the waste management unit or alternative boundary to account for the presence of physical obstacles, such as gas and power lines, that would be impaired or destroyed by well installations in the area. Further, this provision allows for the installation of a well network while considering the locations of landfill design components such as run-off controls and liner anchors. The proposal also recognized that other factors can affect the placement of monitoring wells. For example, perched water tables or other hydrogeologic phenomena may cause leachate from a MSWLF to travel horizontally for a significant distance before reaching the uppermost aquifer. For this reason, § 258.51(a) of the proposed rule allowed the State to select the closest practical distance downgradient from the waste management unit boundary or the alternative boundary if the uppermost aquifer would not be affected directly beneath the appropriate boundary from releases by the MSWLF.

In general, commenters supported the provision allowing monitoring wells to be located at the closest practical distance from the appropriate boundary (or relevant point of compliance), so this provision has been retained, with some modifications, in today's final rule. First, a number of commenters urged the Agency to require that monitoring wells be located at the closest practical distance hydraulically downgradient from the landfill. The Agency agrees with these commenters and has added "hydraulically downgradient" to § 258.51(a)(2) of today's final rule.

The second change simply incorporates the use of the phrase "relevant point of compliance." The final rule specifies that owners or operators of existing units locate wells at the closest practical distance from the relevant point of compliance where existing physical obstacles prevent installation at the relevant point of compliance. The Agency believes that owners and operators of lateral expansions, new, or replacement units will be able to account for the presence of structures or obstacles in the planning process and will be able to place monitoring wells at the relevant point of compliance. However, this may not hold true for existing units that were constructed without consideration of the need for ground-water monitoring well installation. Therefore, the Agency is continuing to allow owners and operators of existing units to install ground-water monitoring systems at the closest practical distance from the relevant point of compliance.

Finally, other commenters expressed confusion with the proposed provision allowing the State to select a location for well placement if subsurface conditions cause hazardous constituents to migrate horizontally past the selected boundary before descending into the uppermost aquifer. One commenter in particular noted that it was unclear if this additional location would create a second alternative boundary.

To eliminate confusion, the Agency has modified § 258.51(a)(2) in today's final rule to require that the monitoring system be installed at the relevant point of compliance that ensures detection of ground-water contamination in the uppermost aquifer. Therefore, as an example, if contamination could migrate past the relevant point of compliance because of a perched zone that does not qualify as the uppermost aquifer, the monitoring system must be placed at the relevant point of compliance appropriate boundary, and be capable of detecting contamination that would enter the uppermost aquifer. As mentioned before, the placement of monitoring wells must be certified by a qualified ground-water scientist, or approved by the Director of an approved State.

4. Section 258.52 Determination of Ground-Water Trigger Level

The proposed rule required States to set trigger levels for all appendix II constituents prior to initiation of Phase I monitoring. The trigger level was a health-based or environmental-based level which was determined by the State to be an indicator for protection of human health and the environment. When available, these levels were to be maximum contaminant levels (MCL) promulgated under section 1412 of the Safe Drinking Water Act. If an MCL had not been established, the level was to be a health-based level that met four specified criteria. Contamination exceeding trigger levels indicated a potential threat to human health or the environment that could require further study. The owner or operator would be required to conduct an assessment of corrective measures whenever concentrations of hazardous constituents in the ground water exceeded trigger levels.

Many commenters objected to the requirement that States establish trigger levels for all appendix II constituents. Their rationale was that the task of establishing risk-based trigger levels was too complex and unduly burdensome for States; many States would lack both the technical and financial resources necessary to set trigger levels. Several commenters pointed out that even EPA had set very few MCLs, and that many States would have even fewer resources for this challenging task. Additionally, commenters alleged that allowing States to set trigger levels would lead to inconsistencies among the various States. Several commenters also pointed out that adequate toxicological information was not available for all appendix II constituents, and that establishing health-based trigger levels for those constituents would be impossible.

In response to the overwhelming number of commenters objecting to each State setting its own trigger levels for all appendix II constituents, EPA has deleted § 258.52 in today's final rule. The Agency agrees with commenters that this exercise would be costly, time consuming, and difficult for States to implement. However, to insure an appropriate level for cleanup activities, it is necessary to have a ground-water protection standard for corrective action. Therefore, in today's rule at § 258.55(i), EPA is requiring that the ground-water protection standard for those constituents detected above background during assessment monitoring be either the MCL, if available, or background concentration. An approved State may set alternative health-based or environmental-based levels determined by the factors provided in § 258.55(j). The requirements for ground-water protection standards are discussed more fully in the section on assessment monitoring.

As mentioned previously, EPA determined that the ground-water monitoring program can be simplified by eliminating the establishment of the trigger level. The ground-water

protection standard will be used in place of the trigger level to determine when a facility should evaluate and select corrective action remedies. This change does not reduce the level of protection afforded by the rule; it merely streamlines the program (thus improving its implementation).

5. Section 258.53 Ground-Water Sampling and Analysis Requirements

The proposed rule required MSWLF owners and operators to develop a ground-water monitoring program that includes consistent sampling and analysis procedures that would ensure accurate ground-water monitoring results. The sampling and analysis procedures were required to provide an accurate representation of both the background ground-water quality and the quality of ground-water at monitoring wells placed down gradient from the landfill site. The proposed rule set minimum requirements for the facility ground-water monitoring program's sampling and analysis procedures and techniques. The procedures and techniques were to be documented in the facility's operating record and were to include: (1) Sample collection; (2) Sample preservation and shipment; (3) Analytical procedures; (4) Chain of custody control; and (5) Quality assurance and quality control.

The proposed rule also set general performance standards for ground-water sampling and analytical methods that included: (1) The method used must accurately measure hazardous constituents and other monitoring parameters; (2) the procedures and frequency of the method must be protective of human health and the environment; (3) the sampling method employed must ensure that the statistical procedure used would have an acceptably low probability of failing to identify contamination; (4) ground-water elevations must be measured in each monitoring well immediately prior to sampling; (5) the rate and direction of the ground-water flow in the uppermost aquifer must be determined each time ground-water gradient changes were indicated by previous sampling measurements; and (6) the background ground-water quality be established at a hydraulically upgradient well for each of the monitoring parameters or constituents required by the applicable ground-water monitoring program (requirements for determining the applicable program for each landfill unit were provided in § 258.54(a) and § 258.55(a) of the proposed rule).

The proposed rule allowed for variances to the requirement that background ground-water quality be based upon sampling at monitoring wells upgradient from the unit or area. The variance was allowed if either the hydrogeologic conditions do not allow the owner or operator to determine which wells are upgradient and if sampling at other wells would provide an indication of background ground-water quality that is as representative or more representative of background quality than upgradient monitoring wells. The proposed rule also provided that a State may determine background ground-water quality if background quality could not be determined on site.

The requirements for applying statistical procedures in the proposed rule were the same as the statistical procedures proposed on August 24, 1987 for hazardous waste facilities under subtitle C of RCRA (Statistical Methods for Evaluating Ground-Water Monitoring Data from Hazardous Waste Facilities, 52 FR 31948). The Agency believed that the proposed subtitle C procedures also were appropriate for MSWLFs and provided sufficient flexibility to allow effective State implementation. The Agency noted that the final statistical procedures promulgated under § 258.53 would reflect comments received on this proposal as well as the final statistical package promulgated under 40 CFR part 264.

The proposed requirements provided that the owner or operator must select an appropriate statistical procedure to determine if samples taken from downgradient monitoring wells represent a statistically significant increase over background values for each parameter or constituent that occurs in the downgradient sample. The proposed rule required the owner or operator to employ one of four statistical procedures or an alternative procedure that would protect human health and the environment and meet the ground-water protection standard provided in § 258.52(b) of the proposed rule. The four statistical procedures provided in the proposed rule include: (1) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination; (2) An analysis of variance based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination; (3) A tolerance or prediction interval procedure; and (4) A control chart approach. The proposed rule also allowed the State to develop an alternative sampling procedure and statistical test if necessary to protect human health and the environment. In establishing an alternative statistical test, the State was to consider the factors provided in § 258.53(h)(3) (i)–(v).

The proposed rule required the owner or operator to determine whether or not there is a statistically significant increase over background levels for each parameter and constituent the owner or operator is required to monitor for under the appropriate program. The owner or operator was required to make these statistical determinations each time he or she assessed ground-water quality. In making this comparison, the owner or operator was to apply a statistical procedure provided for in the proposed rule and make any determinations of whether there has been a statistically significant increase or decrease over background within a reasonable time period, set by the State, after completing sampling. A reasonable time to perform statistical analysis would typically be upon receipt of analytical data from the laboratory.

EPA received many comments in response to both this rule and the August 24, 1987 proposed statistical methods for ground-water monitoring at hazardous waste facilities. As indicated in the preamble to the subtitle D proposal, the Agency considered comments to both proposed rulemakings when establishing the requirements in today's final rule.

In response to the subtitle D proposal in particular, EPA received comments covering the following areas: (1) The use of statistical significance; (2) the required frequency of sampling and the number of samples collected; (3) the establishment of Type I and Type II error levels; (4) the measurement of the rate and direction of ground-water flow in the uppermost aquifer each time ground-water gradient changes; (5) consistency with subtitle C statistical procedures; and (6) sample filtration. Comments received in each area and the Agency's responses are discussed below.

a. Statistical Tests

Many commenters expressed concern over the use of statistical comparisons to background data to trigger assessment (Phase II) monitoring. Commenters believe that the rule should be more flexible, and that other methods of data analysis should be available for evaluating ground-water monitoring data. Two commenters believe that because ground-water data are subject to several kinds of random variability resulting from spatial, temporal, sampling, and analytical sources, the use of the proposed statistics would result in excessive false positives. One

of these commenters believes that particular procedures should not be specified in the rule because ground-water data evaluation is a site- and waste- specific issue. Commenters suggested that the final rule allow for the use of trend analysis, graphical statistics such as box plots and time versus concentration plots, descriptive statistics, and "action levels." Two commenters suggested that decisions be based on careful data evaluation, interpretation by competent experts in water quality interpretation, or sound engineering judgement.

The Agency carefully considered the comments suggesting that the Agency allow methods of data evaluation other than statistical tests. However, because of the decision to provide for the selfimplementation of today's final rule, the Agency is requiring a quantitative data evaluation method that could be consistently and objectively implemented according to a set of performance standards. Therefore, today's final rule requires that facilities evaluate ground-water monitoring data using a statistical method provided in § 258.53(g) that meets the performance standards of § 258.53(h). It is important to note that § 258.53(g) contains a provision allowing for an alternative statistical method that may include some forms of trend analysis and graphical methods such as control charts, as long as the performance standards of § 258.53(h) are met.

Today's rule provides several options for owners and operators who are choosing statistical methods, thus giving them the flexibility to consider site-specific factors when choosing statistical methods. EPA believes that at least one of these types of procedures will be appropriate for virtually all facilities. The statistical tests provided by today's final rule include: (1) Parametric analysis of variance (ANOVA) followed by multiple comparisons; (2) ANOVA based on ranks followed by multiple comparisons; (3) a tolerance or prediction interval procedure; and (4) a control chart.

In deciding which statistical test is appropriate, the owner or operator will need to consider the theoretical properties of the test, data availability, the site hydrogeology, and the fate and transport characteristics of potential contaminants at the MSWLF. The owner or operator will then have to determine whether the procedure is appropriate for the site-specific conditions at the facility, and ensure that it meets the performance standards of § 258.53(h). Guidance on choosing appropriate statistical methods can be found in Statistical Analysis of Ground-Water Monitoring Data at RCRA Facilities (EPA 530–SW–89–026, NTIS Number: PB89–151–047).

The proposed rule provided an allowance for States to establish an alternative statistical procedure and statistical test for any of the appendix II constituents or the proposed § 258.54(b) parameters if necessary to protect human health and the environment. The proposed rule listed several factors that a State should consider for establishing an alternative statistical procedure, including: (1) If the distributions for different constituents differ, more than one procedure may be needed; (2) each parameter or constituent must be tested for separately in each well, and tests for individual constituents are required to be done at a Type I error level (an indication of contamination when it is not present) of no less than 0.01 while multiple well comparisons may use a Type I experiment-wide error rate no less than 0.05; (3) the owner or operator must ensure that the number, location, and depth of monitoring wells will detect hazardous constituents that migrate from the MSWLF; (4) the statistical procedure should be appropriate for the behavior of the parameters or constituents involved and should include methods for handling data below the limit of detection; and (5) the statistical procedure used should account for seasonal and spatial variability and temporal correlation. The proposed rule also allowed States to require statistical tests of trend, seasonal variation, autocorrelation, or other interfering aspects of the data if contamination is detected in samples from downgradient monitoring wells and the State or the owner or operator suspects that the detection is an artifact caused by some feature of the data other than ground-water contamination. These trend analyses would be required to establish whether the significant result is indicative of natural variation or of actual contamination.

EPA received several comments on the proposed rule's allowance for States to establish alternative statistical procedures. Some commenters felt this provision was too general, while other commenters felt the provision did not give the State enough flexibility in establishing alternative procedures.

One commenter maintained that the requirement that an alternative statistical procedure, employed under § 258.53(h) (2) (v) of the proposed rule, "be protective of human health and the environment" was vague and lacked meaning. The commenter contended that a statistical procedure is a data evaluation tool, not a method to determine the potential for human and environmental impacts.

Although the Agency believes that the protection of human health and the environment is the goal of a ground-water monitoring program, the Agency agrees that use of this general requirement as the sole performance objective of an alternative statistical test is not sufficiently specific. Therefore, in response to comments, today's rule has been modified to require that an alternative statistical method employed by an owner or operator meet each of the performance standards given in § 258.53(h) of today's final rule. The owner or operator must notify the State of the use of an alternative statistical test and place a justification for the alternative test in the facility's operating record. The justification must demonstrate that the alternative method meets the performance standards of § 258.53(h). The performance standards presented in § 258.53(h) are the same as those required for all statistical tests listed in § 258.53(g) of today's rule.

The Agency realizes that the statistical methods outlined in today's final rule may not be applicable to every single MSWLF, and that the implementation of an inappropriate statistical test would not be protective of human health and the environment. EPA therefore recognizes the importance of allowing MSWLFs to choose an alternate statistical test when the statistical tests presented in today's rule are inappropriate for a facility's specific circumstances. The Agency anticipates that as State programs become approved, States will be taking on the responsibility of approving alternate statistical tests proposed by MSWLFs.

b. Frequency of Sampling and the Number of Samples Collected

Many commenters were concerned that the use of statistical analyses would require fairly large data sets or that the required sampling frequencies would not provide large enough data sets during the initial periods of monitoring to determine statistical significance. EPA received similar comments to the proposed subtitle C ground-water monitoring requirements (August 24, 1987) 53 FR 31948. In responding to comments for the subtitle C requirements, EPA determined that it is necessary to conduct at least four independent sampling events from each well at least semi-annually before a meaningful statistical analysis can be performed.

Today's final rule requires the owner or operator to determine whether there has been a statistically significant increase over background, at each well, after the completion of required sampling and analysis (§ 258.53(i)). Therefore, this will require the owner or operator to collect four samples from each well before the first statistical test can be performed, or in other words, collect four samples from each well during the first six months of monitoring for each monitoring parameter. This first sampling event (i. e., four samples from each well) within the first six months of monitoring would apply not only to detection monitoring, but also during assessment monitoring and corrective action monitoring whenever any new appendix II parameters are detected in downgradient wells and background must be established. It should be noted that § 258.55 of today's rule allows the Director of an approved State to designate a subset of wells for the owner or operator to sample and analyze during assessment monitoring and corrective action monitoring rather than each well. A further discussion regarding this flexibility is provided later in this appendix. During subsequent sampling events after background concentrations have been established; however, today's final rule requires a minimum of one sample from each well. Additional samples may be required depending on the statistical method used. Each successive sample will be added to the sampling data base so that a statistical evaluation can be performed.

This provision differs in some regard from the sampling procedure specified in § 264.98 (g)(1) of 40 CFR part 264 for hazardous waste facilities. The subtitle C regulations require owners and operators to take a sequence of at least four samples, at an interval that assures, to the greatest extent technically feasible, that an independent sample is obtained while considering the uppermost aquifer's effective porosity, hydraulic conductivity, hydraulic gradient, and the fate and transport characteristics of potential contaminants. This sampling procedure is to be used unless the alternate provision under § 264.98(g)(2) is approved by the Regional Administrator. The alternate sampling procedure may allow the owner or operator to take fewer than four samples semiannually if it is shown that the facility's hydrogeologic setting (e.g., slow rates of ground-water flow) would preclude one from obtaining four independent samples during a six month period (Statistical Analysis of Ground-Water Monitoring Data at RCRA Facilities (April, 1989)). The intent of this provision was to allow for flexibility in designing site specific sampling procedures and to reduce the effects of autocorrelation (a measure of dependence among sequential observations from the same well) in ground-water samples.

For subtitle D MSWLFs, a minimum of one sample for subsequent sampling events, after background is established for each parameter, was chosen primarily because of practicable capability considerations. The sampling and analysis costs would quadruple if four samples were required during each semiannual sampling event. A MSWLF for example, with 25 wells screened in the same interval, would be required to sample and analyze 100 ground-water samples every six months. If the facility were in detection monitoring, the semiannual analytical costs alone would exceed $35,000.00, and field sampling costs could nearly double that figure. A number of MSWLFs have more than 25 monitoring wells that are screened throughout several saturated intervals. The Agency therefore believes that sampling and analytical costs associated with a procedure requiring four semiannual samples would far exceed the practicable capability of many MSWLF owners and operators.

Additionally, the Agency would like to emphasize that although the rule requires a "minimum" of one sample for subsequent sampling events after background has been established, § 258.53(c) of today's rule requires that sampling procedures and frequency be protective of human health and the environment. Section 258.53(f) also requires that the number of samples collected be consistent with the appropriate statistical procedures determined pursuant to paragraph (g). Therefore, the owner or operator may find it necessary to take more than one sample during each sampling event to meet the rule requirements.

c. The Establishment of Type I and Type II Error Levels

The Agency received two comments regarding the establishment of type I and type II error levels. A type I error occurs when a test incorrectly indicates contamination or an increase in contamination. A type II error occurs when monitoring fails to detect contamination or an increase in a concentration of a hazardous constituent. One commenter objected to § 258.53(c) of the proposed rule, which required that the sampling requirement ensure that the statistical procedure used to evaluate samples have an "acceptably low" probability of failing to identify contamination. The commenter believed that the Agency should instead provide a specific level for type I errors, of no greater than 0.05, and preferably 0.01. Another commenter was opposed to the error levels that were required for state-established alternate statistical procedures in § 258.53(h)(3)(ii). The commenter believed it is arbitrary to specify type I and type II error levels without taking into account the monitoring system, the nature of the constituents, and analytical and sampling techniques. The commenter believed that the Agency should allow error rates to be based on site- and waste-specific conditions to ensure that a statistical test will both reasonably detect releases and keep the sampling and analytical requirements within a practicable scope.

The Agency agrees that it is necessary, particularly in light of the self-implementing nature of today's rule, to specify type I error levels for individual well comparisons and multiple well comparisons. The Agency believes that individual facility owners and operators would have difficulty in accurately defining a type I error rate that would provide an "acceptably low" probability of failing to identify contamination. Consequently, the Agency included in today's rule the same performance standards for statistical tests promulgated on October 11, 1988 for RCRA subtitle C (53 FR 39720). The performance standards contained in today's rule specify type I error levels that apply to all individual wells and multiple well comparison procedures, as well as any alternate statistical procedures established by the State as was proposed.

EPA's basic concern in establishing performance standards for statistical methods is to achieve a proper balance between the risk that the procedures will falsely indicate that a regulated unit is causing background values or concentration limits to be exceeded (false positives) and the risk that the procedures will fail to indicate that background values or concentration limits are being exceeded (false negatives). The approach promulgated today, as for subtitle C, is designed to address that concern directly. EPA is limiting the type I error level (false positive) for the purpose of controlling the type II error level (false negative). The Agency has set the type I error level at 0.01 for individual well comparisons and at 0.05 for multiple comparisons. The Agency believes statistical analyses and sampling procedures that meet the performance standards presented in

today's rule would have a low probability of indicating contamination when it is not present, and of failing to detect contamination that actually is present. Further, the provisions in §§ 258.54(c)(3) and 258.55(g)(2) allow owners and operators to demonstrate that the indication of contamination resulted from an error in statistical evaluation. These provisions will allow owners and operators to control false positive rates.

The Agency believes facility owners and operators would find it difficult to quantify type I and type II error levels that are based on factors such as monitoring systems, the nature of constituents, and analytical and sampling techniques. Thus, the Agency is requiring that any statistical method selected under § 258.53(g) should meet the performance standards outlined in § 258.53(h) of today's rule.

d. Measurement of the Rate and Direction of Ground-Water Flow

EPA received several comments regarding the determination of ground-water flow rate and direction. Two commenters were concerned that the rule requires water level measurement prior to well sampling, but does not clearly state that the measurement of water levels should occur prior to well purging. These commenters were concerned that owners and operators may measure water levels in wells shortly after the wells are purged, thereby obtaining unrepresentative water level measurements.

EPA agrees with the concerns expressed by these commenters. Static water levels should be measured prior to well purging. Further, the Agency realizes that in many situations ground-water recovery in purged wells may take a considerable amount of time. Ground-water level measurements made in wells that have not fully recovered will yield unrepresentative results, leading to errors in the determination of ground-water flow directions, hydraulic gradients, and ground-water flow rates. In order to avoid this problem, the Agency has modified § 258.53(d) of today's rule to require that owners and operators measure water levels prior to well purging.

Two other commenters wished to ensure that facility owners and operators measure ground-water levels in all wells over a short time frame so that accurate water level elevations can be determined. One commenter, recognizing that a facility may not sample all of their wells on the same day, suggested that rather than requiring owners and operators to determine water level measurements prior to sampling, EPA could require that water level measurements be performed at specified intervals.

In response to these commenters' concerns, § 258.53(d) of today's rule requires that, for wells that monitor the same waste management area, owners and operators must measure water level elevations within a period of time short enough to avoid temporal variations in ground-water flow that could preclude accurate determination of ground-water flow rate and direction. As the commenter noted, in some instances ground-water sampling at a given waste management area may take more than one day. The Agency believes that water level measurements from boreholes, piezometers, or monitoring wells used to construct a single piezometric surface should be collected within a 24-hour period. Moreover, certain situations necessitate that all measurements be made within a period of time less than 24 hours. These situations include: tidally influenced aquifers; aquifers affected by river stage, impoundments, or unlined ditches; aquifers stressed by intermittent pumping of production wells; and aquifers being actively recharged due to a precipitation event. Consequently, facilities must measure water levels in all wells prior to initiating well purging and sampling.

Several commenters believed that the requirement that the owner or operator determine the rate and direction of ground-water flow in the uppermost aquifer each time ground-water gradient changes, as indicated by previous sampling period elevation measurements, is overly burdensome, unrealistic, and unnecessary. Commenters maintained that many ground-water flow variations are the result of seasonal factors, especially in dynamic ground-water regimes, and that any fluctuation of any ground-water level will result in a ground-water gradient change, consequently each monitoring event would require a separate evaluation of the rate and direction of ground-water flow.

Commenters suggested a variety of ways in which the proposed rule could be modified, including: (1) Require recording and reporting of ground-water level data, but only require analysis of ground-water level and flow data as necessary to understand or interpret other ground-water data; (2) require evaluation of water level data based boundary conditions for the range of "routine" ground-water gradients expected at a site during normal hydrogeologic cycles; (3) compare water level measurements to other well measurements to determine if redefinition of ground-water flow rate and direction is necessary; and (4) require that ground-water elevations be compared to the normal range of elevations for each well, and if any changes in water level elevation are inconsistent with other wells, indicative of a change in ground-water flow direction, or display gradients beyond ranges observed in past sampling events, then analyze ground-water flow directions and rates for change.

The Agency has considered the comments summarized above, and believes that the requirements for determination of ground-water flow direction and rate do not represent a significant burden to owners and operators. Moreover, it is the Agency's intent to require facilities to monitor changes in ground-water flow rate and direction, particularly in settings where ground-water flow rate and direction change dramatically and/or frequently. Only by maintaining a constant understanding of changes in the direction and rate of ground water flow can facilities ensure that their monitoring systems are adequately designed to detect a release, and that facilities will be able to predict the fate of a release, should a release be detected or corrective action become necessary.

Although subtitle C currently requires facilities to determine ground-water flow direction and rate at least annually, the Agency has proposed requirements for Subtitle C facilities to determine ground-water flow rate and direction more frequently than annually, when justified by site-specific hydrogeologic conditions (53 FR 28160). Because of the self-implementing approach to today's final rule, no mechanism exists for requiring a more frequent determination of ground-water flow direction and rate as provided for under subtitle C. Therefore, today's final rule requires that all facilities determine ground-water flow direction and rate each time ground-water is sampled. The Agency does not believe requiring flow rate calculations for each sampling event will represent any increased burden to owners and operators. Estimating average flow rate generally requires only a simple calculation, using values for porosity, hydraulic conductivity, and hydraulic gradient. The April 1989 EPA publication Statistical Analysis of Ground-Water Monitoring Data at RCRA Facilities (EPA 530–SW–89–026, NTIS Number: PB89–151–047), provides guidance on determining ground-water flow rate. Values for porosity and hydraulic conductivity should be determined by facilities during their site

investigation activities. Hydraulic gradients can be determined using a simple calculation once ground-water elevation data are available to draw equipotential lines on a map of the facility. Ground-water flow direction also can be determined from a map displaying equipotential lines.

e. Consistency With Subtitle C Statistical Procedures

The proposed statistical procedures were the same requirements as those proposed on August 24, 1987, for hazardous waste disposal facilities regulated under subtitle C of RCRA (see 53 FR 31948). Today's final statistical procedures reflect comments received on the final statistical package promulgated under part 264 of subtitle C. Comments on the statistics rule promulgated under subtitle C addressed the following areas: (1) Power of a statistical test; (2) methods to analyze below detection limit data; (3) establishing background concentrations with downgradient wells; (4) guidance document; (5) data distribution assumptions; (6) obligation of owner or operator to propose statistical methods and sampling procedures; (7) data variability and sampling procedures; (8) procedures at interim status facilities; (9) determining background concentrations; (10) sampling required by proposed § 264.93(g)(2); (11) type I experiment wise error rate; and (12) time intervals for ground-water sampling. Comments also were received in many of these areas on the proposed subtitle D rule and have been discussed previously in today's notice. Additional discussion of these comments is contained in the preamble to the October 11, 1988 final rule which outlines statistical methods for evaluating ground-water monitoring data from hazardous waste facilities (53 FR 39720).

Today's rule incorporates one additional provision of the final subtitle C statistical procedures rule that was not specifically included in the proposed subtitle D rule. In the proposed subtitle C rule, the Agency invited public comment on the methods available for analyzing data where the background level of a constituent is either below the detection limit of the analytical method used or is recorded as a trace level of the constituent. The proposed subtitle D rule required the owner or operator to evaluate different ways of dealing with values below the limit of detection and choose the one that is most protective of human health and the environment.

Several commenters to the subtitle C rule requested EPA to consider establishing national baseline values for compounds that do not occur naturally in ground water, and as a result are frequently recorded as below the limit of analytical detection in background monitoring wells. Specifically, the commenters suggested that EPA conduct a round-robin study involving several different certified chemical laboratories to establish national baseline values for these compounds.

The Agency did not establish national baseline values for each constituent in the final subtitle C rule, but instead, required that the statistical method chosen include procedures to evaluate data that are below the limit of analytical detection. The Agency also added the requirement that any practical quantitation limit (PQL) used must be the lowest concentration level that can be reliably achieved with specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

Accordingly, EPA has added the same requirement to § 258.53(h)(5) of today's final rule. Appendix II of today's final rule lists the method-specific PQL for each constituent. These PQLs are the Agency's best estimate of the practical sensitivity of the applicable method for RCRA ground-water monitoring purposes.

On July 9, 1987, the Agency published a final rule, "List (Phase I) of Hazardous Constituents for Ground-Water Monitoring" (52 FR 25942; July 9, 1987) listing practical quantitation limits (PQLs) for specified analytical methods capable of detecting Appendix IX parameters. The PQLs were established from "Test Methods for Evaluating Solid Waste" (SW–846). SW–846 is the general RCRA analytical methods manual, currently in its third edition. The PQLs listed there and in Appendix II of today's final rule represent EPA's best estimate in 1986 of the lowest concentrations of analyses in ground water that can be reliably determined within specified limits of precision and accuracy by the indicated methods under routine laboratory operating conditions. These numbers do not represent a determination of detection limits in other matrices (55 FR 22540–42; June 1, 1990). The PQLs are included for guidance purposes only and are not part of today's regulatory requirements. Regulatory authorities may find PQLs useful in checking on a laboratory's performance and in evaluating analytical methods. A background document containing information about analytical methods and their established PQLs can be found in the docket for this rulemaking.

f. Sample Filtration

Many commenters questioned whether the Agency was requiring owners or operators to measure dissolved (filtered samples) or total concentrations (unfiltered samples) of constituents in ground water. As discussed below, the Agency believes that samples should not be field-filtered prior to laboratory analysis.

During ground-water sampling, every attempt should be made to minimize changes in the chemistry of the sample that may result in a non-representative view of the subsurface environment. A sample that is exposed to the atmosphere as a result of field filtering is very likely to lose a significant amount of volatiles, thereby providing non-representative monitoring data. Further, emulsion-trapped organics are lost through field filtering. Field filtration of ground-water samples for metal analyses will not provide accurate information concerning the mobility of metal contaminants. Some mobile metal contaminants may move through fractured, Karstic, and porous media, not only as dissolved species, but also as precipitated phases, polymeric species, or adsorbed to inorganic or organic particles (e.g., colloids) that are likely to be removed by filtration.

Therefore, § 258.53(b) of today's final rule prohibits MSWLF owners and operators from field filtering their ground-water samples in all cases. The Agency recognizes however, that there are certain circumstances where it is necessary to filter or centrifuge the sample under controlled conditions in the laboratory prior to analysis to prevent instrument damage. Sample filtration in the laboratory is permissible if, after acid digestion, insoluble materials (e.g., silicates) remain and could clog the instrument nebulizer. If this step is necessary, the filter and filtering apparatus must be thoroughly cleaned and prerinsed with dilute nitric acid. Laboratory personnel should consult SW–846 for information concerning these procedures.

The Agency would like to note that background concentrations also will be established on the basis of unfiltered samples (as are MCLs) thereby providing a consistent comparative basis for data evaluation between background and downgradient monitoring wells.

b. Section 258.54 Detection Monitoring

The proposed rule set forth a list of parameters that were to be monitored at least semiannually (Phase I monitoring) as the primary means of detecting

ground-water contamination during the active life and closure of a unit. The actual monitoring frequency used was to be based on the ground-water flow rate and the resource value of the aquifer. During post-closure care, however, the proposed rule allowed the State to set a different minimum frequency on a site-specific basis. The proposed monitoring parameters included major cations, major anions, metals, cyanide, and 46 volatile organic compounds (VOCs).

The proposed rule required that an owner or operator expand the Phase I monitoring program to Phase II monitoring when two or more of parameters (1) to (15), any one or more of parameters (16) to (24), or any of the VOCs listed in appendix I were detected at levels that significantly differed from background levels. When this occurred, the owner or operator was required to notify the State of the statistically significant finding within 14 days and implement Phase II monitoring within 90 days or an alternative time period approved by the State. Prior to implementing Phase II monitoring, the owner or operator could demonstrate to the State that an error in sampling and analysis occurred or that the contamination resulted from a source other than the MSWLF.

The Agency received extensive comments on the Phase I monitoring program. The majority of the commenters addressed the list of monitoring parameters. Additionally, other commenters addressed the sampling and analysis procedures, the Phase II monitoring trigger, and the monitoring frequency. These comments are discussed below.

a. Monitoring List

The Agency proposed a list of monitoring parameters that the Agency believed provided a reliable means of detecting the possible presence of releases from MSWLFs while avoiding unnecessary analytical costs to the regulated community. The major cations and anions that were on the Phase I parameter list are those used to classify ground water into geochemical facies. The proposed parameters consisted of:

(1) Ammonia (as N);
(2) Bicarbonate (HCO_3);
(3) Calcium;
(4) Chloride;
(5) Iron;
(6) Magnesium;
(7) Manganese (dissolved);
(8) Nitrate (as N);
(9) Potassium;
(10) Sodium;
(11) Sulfate;
(12) Chemical Oxygen Demand (COD);
(13) Total Dissolved Solids (TDS);
(14) Total Organic Carbon (TOC);
(15) pH;
(16) Arsenic;
(17) Barium;
(18) Cadmium;
(19) Chromium;
(20) Cyanide;
(21) Lead;
(22) Mercury;
(23) Selenium;
(24) Silver; and
(25) The 46 VOCs listed in appendix I.

In the preamble to the proposed rule, the Agency invited public comment on this list of Phase I monitoring parameters. Five commenters supported the list of proposed parameters; however, the majority of commenters felt the list was too extensive for routine monitoring and suggested it be reduced. They contended that the amount of required sampling would not only overwhelm MSWLF owners and operators who would perform and fund analyses, but also would overwhelm the States who would need to devote time for data review and analysis.

In contrast, several commenters suggested additions to the Phase I monitoring list. Specifically, commenters suggested adding tetrachloroethylene, which is currently regulated under the Safe Drinking Water Act, alkalinity (as $CaCO_3$), water temperature (to aid in chemical conversions), radioactive contaminants, specific conductance, carbonate, fecal bacteria, biological oxygen demand (BOD), organic nitrogen, and total Kjeldahl nitrogen.

The Agency reevaluated the list of detection monitoring parameters in response to these comments. The Agency proposed the use of 46 VOCs as indicator parameters because analyses of available data show that VOCs are more mobile than many other organic compounds. These compounds are fairly soluble in water and have low molecular weights, both of which lead to enhanced mobility in ground water. Further, VOCs do not tend to have a high sorptive potential on to matrix aquifer material. Therefore, the Agency believes that volatile organics would be among the best indicators for early detection of a release and has retained them in appendix I.

Commenters generally supported detection monitoring for VOCs but requested that seven chemicals be deleted from Appendix I because of analytical problems: bromochloromethane, 4-bromofluorobenzene, 1,4-difluorobenzene, ethanol, 2-chloroethyl vinyl ether, ethyl methacrylate, and dichlorodifluoromethane. The Agency agrees that these chemicals should be deleted from detection monitoring, except for bromochloromethane. This chemical is amenable to analysis by EPA Methods 8021 and 8260. It is often used as an internal standard, but the Agency believes that other standards are available. Two chemicals, 4-bromofluorobenzene and 1,4-difluorobenzene, were deleted because they are used as internal standards for mass spectrometry determination. Four others were deleted for the following reasons: Ethanol, because it does not purge adequately in the purge-trap-desorb technique; 2-chloroethyl vinyl ether, because of poor purging and instability of standard solutions; ethyl methacrylate, for which conflicting information has been received regarding reliability of determination in routine VOC screening analysis; and dichlorodifluoromethane, because it is the only analyze in this group that requires charcoal in the trap and the charcoal can reduce sensitivity to other Appendix I analyses. The rationale and data supporting each deletion is discussed fully in background documents to this rule.

Eight chemicals are added to the proposed VOCs listed in Appendix I by today's final rule: 1,2-dibromo-3-chloropropane; 1,2-dibromoethane; o-dichlorobenzene; p-dichlorobenzene; 1,2-dichloropropane; 1,1,1,2-tetrachloroethane; tetrachloroethylene; and cis-1,2-dichloroethylene. The first seven are in both the RCRA hazardous waste constituent list (Appendix VIII of 40 CFR Part 261), and the ground-water monitoring list (Appendix IX of 40 CFR Part 264). The cis-1,2-dichloroethylene is in Appendix VIII as an unspecified isomer and is included specifically among VOCs proposed for addition to the National Primary Drinking Water Regulations by EPA in May 1989 (54 FR 22062) under the Safe Drinking Water Act. Today's rule amends appendix I to include each of these constituents because the Agency believes: (1) These constituents may be present in MSWLFs; (2) each of these constituents is of concern in the protection of human health and the environment; and (3) their addition to Appendix I will increase the ability to detect potential migration of contaminants to the ground water from MSWLFs. However, including these constituents on the detection monitoring list will not increase the monitoring cost to MSWLF owners and operators because all of the added VOCs can be identified with the same analytical method (Method 8260) as can be used to identify the other VOCs listed in Appendix I. Therefore, the owner or operator will be better able to monitor the ground water, while

incurring no additional costs. Appendix I of today's final rule now contains 47 VOCs.

A number of commenters suggested that EPA limit the number of VOCs required for analysis to a single analytical method. Several commenters requested that the list be limited to those VOCs that can be analyzed by EPA Methods 601, 602, and 624. One commenter implied that EPA Method 8240 be recommended. In response to these comments, the VOCs on today's final Appendix I list are amenable to a single method. The Agency believes that Method 8260 (capillary column) is the preferred scanning method for all of the VOCs on Appendix I because of its ability to analyze for a large number of compounds; however, the Agency is not requiring a specific method in today's final rule.

The proposed rule identified eight metals to be analyzed during the first phase of monitoring: Arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver. Several commenters suggested that the metals be removed from monitoring, though one commenter suggested the list of metals be expanded to include copper, nickel, and zinc. Most commenters implied that the metals should be deleted because of their lower mobility. While the Agency agrees that metals are less mobile than the VOCs and that they may be less significant in indicating a release from a newer MSWLF than the VOCs, the Agency believes that the metals pose serious threats to human health and to the environment. Recent scientific studies (available in the docket for this rule) have shown that metals may undergo a facilitated transport phenomenon through sorption to colloidal particles. This process makes metals more mobile in ground-water than previously thought. Further, since the geochemical parameters have been eliminated, the metals will provide a direct indicator for inorganic releases to the ground water. Therefore, the Agency requires monitoring for specified metals in appendix I of today's final rule.

The Agency has, however, revised the list of metals for detection monitoring. In response to comments, the Agency has added copper, nickel and zinc. The Agency has also added antimony, beryllium, cobalt, thallium, and vanadium to the required metals in appendix I. The Agency added these eight metals to the detection monitoring list because they are representative of MSWLF leachate. Additionally, all of the metals are amenable to the same ICP scan, and will not significantly increase the cost of the monitoring requirements. The rationale and data supporting the use of these parameters is discussed fully in background documents to this rule.

The Agency notes that mercury and cyanide were originally proposed as constituents for detection monitoring. However, neither are amenable by the ICP scan method and thus both require separate analytical methods. The Agency does not have specific information indicating that their addition to appendix I would improve the ability to detect a release from a MSWLF; therefore, in today's final rule, EPA is not requiring analysis of these two compounds during routine detection monitoring. However, because of potential threats posed by cyanide and mercury, they have been retained on appendix II and are required for analysis during assessment monitoring to determine their presence in ground water.

A number of commenters supported the use of the inorganic geochemical parameters that were included on the proposed list of appendix I parameters (parameters 1 through 15). The majority of these commenters indicated that these parameters, or a subset of them, provide the best indication of a release from the MSWLF and can be economically analyzed. One commenter indicated that they have witnessed a long history of ground-water monitoring at MSWLFs and found that the geochemical parameters performed well as indicators of a release to ground water. Several commenters however, objected to the commonly and naturally occurring inorganic geochemical parameters that were included on the list. These commenters alleged that these constituents exhibit natural spatial and temporal variability and may falsely indicate releases.

After careful consideration of these comments, EPA has decided against requiring the use of geochemical parameters in detection monitoring (appendix I) for several reasons. Eleven of the proposed parameters are naturally occurring in soils and ground water. The remaining four parameters, COD, TDS, TOC, and pH, are common test parameters that are not specific to any one element or class of man-made chemicals. Moreover, the Agency notes that natural variability (both temporal and spatial) of the geochemical parameters is extremely difficult to characterize, especially in heterogeneous hydrogeologic settings. This could lead to an excessive number of false positives and false negatives during detection monitoring. Also, changes in the geochemical parameters have not been correlated with fate and transport characteristics of hazardous constituents from MSWLFs. Finally, the analytical costs associated with monitoring a large suite of geochemical parameters (e.g., fifteen, as listed in the proposed rule) may significantly exceed the cost of an analytical scan method (e.g., inductively coupled plasma (ICP) emission spectroscopy for metals), that has the capability of providing information on many more hazardous constituents. For these reasons, the Agency did not retain the proposed geochemical parameters in appendix I of today's final rule. However, in response to the relatively large number of commenters in support of the geochemical parameters, the Agency is allowing approved States the flexibility to use the geochemical parameters in lieu of some or all of the heavy metals on a site-specific basis. This flexibility will be discussed below.

One commenter suggested creating different lists of indicators for various waste types. However, the Agency does not believe that wastes in all MSWLFs can be characterized as homogenous. The various lists would place an increased burden on the owner or operator to characterize the waste in the landfill in order to choose a specific list of monitoring parameters. Therefore, EPA believes that one comprehensive monitoring list is appropriate. The Agency realizes that it is difficult to create a detection monitoring list that is capable of identifying every possible release. Therefore, the Agency developed a minimum list that should be able to detect, with reasonable confidence, nearly every type of release from a MSWLF while considering the practicable capability of the regulated community. This list of parameters, as specified in appendix I, includes the 15 metals and 47 volatile organic compounds discussed above.

It is possible to analyze all of the required detection monitoring constituents in appendix I by using only two analytical "scan" methods; a gas chromatographic/mass spectroscopic procedure (GC/MS) for the volatile organic analyses and inductively coupled plasma emission spectroscopy (ICP) for the metals. EPA is not, however, requiring the use of the GC/MS or the ICP spectroscopy. The Agency believes these methods involve high identification reliability, although they are not the only or necessarily the best methods for achieving the lowest detection limits for any specific analyze. The Agency has considered the practicable capability of the regulated community in selecting the constituents

for detection monitoring and believes that the final appendix I list is sufficient to protect human health and the environment while avoiding unnecessary analytical costs.

Due to the self-implementing nature of today's final rule, the Agency believes it is necessary to identify a minimum set of parameters for detection monitoring. However, in response to a number of comments that were received, the Agency is allowing approved States to specify a set of indicator parameters for detection monitoring on a site-specific basis. To provide approved States with additional flexibility, § 258.54(a)(1) of the final rule allows an approved State to remove constituents from the detection monitoring list if it can be determined by an approved State that a constituent is not reasonably expected to be in, or derived from, the waste contained in a MSWLF unit. The Agency believes that an approved State would delete parameters from the detection monitoring list only in rare instances where the owner or operator of the MSWLF can demonstrate definitive knowledge of the nature of the waste being disposed in the landfill. This may occur where the chemistry of the waste is uniform (homogeneous) throughout, such as in municipal waste combustion (MWC) ash monofills. Additionally, an owner or operator of a new MSWLF who maintains accurate records of waste placed in the landfill (via a comprehensive waste analysis plan) may be able to show the unlikelihood of certain constituents appearing in leachate emerging from the landfill. In these situations, an approved State may conclude that some of the appendix I constituents are not appropriate for ground-water monitoring at that MSWLF. This variance is not available to MSWLFs in non-approved States due to the self-implementing nature of today's final rule.

In addition, § 258.54(a)(2) of today's rule allows the Director of an approved State to establish an alternative list of inorganic indicator parameters for a MSWLF unit to be used in lieu of some or all of the heavy metals (parameters 1 through 15 in Appendix I) if the alternative parameters provide a reliable indication of inorganic releases from the MSWLF unit to ground water. In determining the alternative parameters, the Director must consider the factors outlined in § 258.54(a)(2) (i)–(iv). Although the Agency generally feels that geochemical parameters may not be the best indicators of a landfill release (for reasons discussed earlier in this appendix), the Agency feels that the geochemical parameters may be reasonable indicators in those instances where natural background levels are not so high as to mask the detection of a statistically significant release or where there is minimal natural spatial and temporal variability in the geochemical parameters. EPA would like to stress that (1) this alternative list may only be granted by an approved State on a site-specific basis because ground-water chemistry may vary from site to site within a State; (2) the alternative list may contain both metals and geochemical parameters because a complete replacement of metals with geochemical parameters may not be protective in all instances; and (3) this alternative list does not allow removal of the volatile organic constituents (parameters 16 through 62 appendix I).

b. Monitoring Frequency

The Agency requested comments on the minimum semiannual monitoring frequency for Phase I presented in the proposed rule. The proposal required Phase I ground-water monitoring at least semiannually during the active life and closure of a unit. The actual monitoring frequency required by States was to be based on the ground water flow rate and the resource value of the aquifer. During post-closure care, however, the proposed rule allowed States to set a different minimum frequency on a site-specific basis.

The Agency received varied comments on the proposed minimum semiannual monitoring frequency. A few commenters supported the minimum semiannual monitoring frequency while one commenter suggested that monitoring be required quarterly. Several commenters suggested that the minimum semiannual monitoring frequency was excessive and requested only annual monitoring. A number of commenters favored allowing owners and operators to demonstrate an appropriate sampling frequency for their facility based on the flow rate within the underlying aquifer. Finally, some commenters supported a phased approach for Phase I monitoring. This scheme would allow owners and operators to monitor semiannually for a subset of the parameters (e.g., the geochemical parameters) and monitor annually, or less frequently, for the remaining parameters (e.g., the metals or VOCs).

The Agency originally proposed, a semiannual monitoring minimum to prevent large volumes of ground water from being contaminated due to inaccurate measurements or unexpected variability in ground-water flow velocities. The Agency recognizes that across the United States, ground-water flow velocities can range from several feet to greater than 2,000 feet per year. In some geographic areas, a minimum annual monitoring frequency could allow contamination to travel considerable distances before detection. In areas with low ground-water flow velocities, the Agency recognizes that quarterly monitoring could be overly burdensome. The Agency believes that the semiannual minimum monitoring frequency strikes a balance between protection of human health and the environment and the practicable capability of the regulated community. This also is the minimum monitoring frequency required for hazardous waste disposal facilities (40 CFR part 264 subpart F). In addition, due to the self-implementing nature of today's final rule, the Agency believes it is necessary to set a minimum monitoring frequency. Therefore, today's rule requires a minimum of semiannual detection monitoring for owners and operators in States with unapproved programs.

The Agency realizes, however, that the need to vary monitoring frequency may make sense in certain situations and should be evaluated on a site-specific basis. The sampling frequency chosen by the MSWLF must be sufficient to protect human health and the environment (§ 258.53(c)). For example, depending on the flow rate of the ground water and the resource value of the aquifer, less frequent monitoring may be allowable or more frequent monitoring may be necessary. For this reason, the Agency is allowing approved States to specify an alternate frequency for repeated sampling and analyses for appendix I constituents during the active life (including closure) considering the following factors: (1) Lithology of the aquifer and unsaturated zone; (2) hydraulic conductivity of the aquifer and unsaturated zone; (3) ground-water flow rates; (4) minimum distance between upgradient edge of the MSWLF unit and downgradient monitoring well screen; and (5) resource value of the aquifer. However, the minimum frequency during the active life (including closure) must be no less than annual. Additionally, because there may be a lower probability of releases from a closed MSWLF, the Agency also is continuing to allow approved States to set alternative frequencies for monitoring during the post-closure care period based on the above-mentioned factors.

Finally, the Agency considered the monitoring schemes suggested by commenters whereby owners and operators would monitor semiannually for a subset of the monitoring

parameters and monitor less frequently for the remainder. The Agency believes that this approach would, in a sense, create a complicated three-phased monitoring program. As discussed earlier, the majority of commenters requested that the final rule be simplified. The Agency, therefore, has attempted to simplify all aspects of today's final rule while ensuring that the requirements are adequate to protect human health and the environment. For this reason, the Agency did not incorporate the monitoring schemes suggested by these commenters.

c. Assessment Monitoring Trigger

The proposed rule required the owner or operator to initiate Phase II monitoring if there was a statistically significant increase over background (or decrease in the case of pH) for two or more of parameters (1) to (15), or a statistically significant increase over background for any one or more of parameters (16) to (24) or any of the VOCs listed in Appendix I. The Agency chose to require a statistically significant increase (or decrease) in two or more of the geochemical parameters as a trigger for Phase II monitoring because many of these parameters could be elevated by human activities (e.g., agriculture) or natural geologic and soil variations.

A few commenters objected to the triggering mechanism outlined above because, in their opinion, it ignored the geochemical correlation among several of the parameters. They asserted that relying on statistical changes in one or two of the indicator parameters would lead to false positive readings. Commenters requested that the Agency increase the number of parameters which must exceed background at a statistically significant level.

Because the Agency deleted the geochemical parameters from today's final rule, the Agency believes that the commenters' concerns have been addressed. The detection monitoring parameters provided by today's final rule do not exhibit the high degrees of spatial variability in most hydrogeological environments as do the proposed geochemical parameters. Therefore, § 258.54(c) of today's final rule requires an owner or operator to begin assessment monitoring if there is a statistically significant increase over background for one or more of the constituents listed in appendix I. Because pH has been deleted from the list of detection monitoring parameters, the determination of a statistically significant decrease does not require an owner or operator to establish an assessment monitoring program. It should be noted that the assessment monitoring trigger will not change even if the Director of an approved State allows the use of geochemical parameters in lieu of some or all of the heavy metals. In the situation where an owner or operator suspects that a statistically significant increase in a geochemical parameter is caused by temporal or spatial variability, the owner or operator will have to demonstrate that this increase was due to natural variation to avoid proceeding to assessment monitoring. A discussion of this demonstration is found in section (d) below.

d. Response to Statistically Significant Increase

Proposed § 258.54(d) required that an owner or operator expand the Phase I monitoring program to Phase II monitoring when two or more of parameters (1) to (15), any one or more of parameters (16) to (24), or any of the VOCs listed in Appendix I were detected at levels that significantly differed from background levels. At the point that Phase II monitoring was triggered, the owner or operator was to notify the State of this finding within 14 days, and was to begin a Phase II monitoring program within a reasonable time period as determined by the State. Within seven days of triggering Phase II monitoring, the owner or operator could notify the State that he or she intended to demonstrate that detection of significant changes in ground-water quality during Phase I monitoring was caused by sampling or analytical error, or caused by a source other than the MSWLF. The owner or operator then had 90 days, or an alternative time period approved by an approved State, in which to complete this demonstration. Such a demonstration may show that false positives (i.e., when a test incorrectly shows contamination or an increase in contamination) were caused by errors in sampling (e.g., improper decontamination procedures of non-dedicated bailers), analysis (e.g., lab contamination of sample with internal standards such as methylene chloride), statistics (e. g., false positive problems associated with many comparisons), and/or natural variation in ground-water quality (e. g., temperature and spatial variability). If the demonstration proved that the contamination was not from the MSWLF or was based on inaccurate results, the owner or operator could halt Phase II monitoring.

Many commenters supported the availability of this demonstration provision. One commenter stressed that Phase II monitoring should not be delayed until the demonstration is completed, however, because of the possibility of additional contamination. The Agency agrees with the commenter. Section 258.54(c) (3) of today's final rule requires the owner or operator to initiate an assessment monitoring program if, after 90 days of determining a statistically significant increase over background for any of the constituents listed in appendix II, the owner/operator cannot perform a successful demonstration. This timeframe was proposed as the time allowed for an owner or operator to complete the demonstration that the statistically significant increase resulted from a sampling or analysis error or that contamination resulted from a source other than a MSWLF. Although approved States may modify the 90 day time period (§ 258.50(g)), the 90 day cut-off now sets a definitive time frame for purposes of self-implementation of today's rule.

A few commenters requested that the time allowed for making the demonstration be extended (e. g., to 180 days). They asserted that it would take more than 90 days to resample and have laboratories conduct new analyses. They further added that it would take more than 90 days to conduct field investigations to determine that another source is causing the contamination. The Agency recognizes that it could take more than 90 days to make the demonstration, and as a result, § 258.54(c) (3) of today's final rule does not place a time limit for owners and operators to complete the demonstration. However, if after 90 days the owner or operator has not made a successful demonstration, (s)he must begin an assessment monitoring program. Any owner or operator may demonstrate that the statistically significant increase resulted from an error in sampling, analysis, statistical evaluation, or natural variation in ground-water quality, or was caused by a source other than the landfill, but this activity does not waive the responsibility of the owner or operator to establish an assessment monitoring program after the allotted timeframe. Owners and operators in approved States should note that the Director of an approved State may modify the 90 day time period for a successful demonstration pursuant to § 258.50(g). If the demonstration proves, after assessment monitoring has been initiated, that the contamination was not from the MSWLF or was based on inaccurate results, the owner or operator may cease assessment monitoring and return to detection monitoring. If the demonstration is successful, the owner

or operator is required by § 258.54 (c) (3) to place a notice in the operating record. Today's final rule no longer requires the owner or operator to notify the State of his or her intent to make the demonstration because of the self-implementing approach of the final regulations. However, because today's final rule is self-implementing, the owner or operator must have the demonstration certified by a qualified ground-water scientist.

Several commenters also requested that the timeframe for notifying the State of a statistically significant increase be extended (e.g., to 30 days). The commenters believe that the proposed timeframes place an unnecessary burden on the owner or operator without a gain in protection of human health and the environment. Although, the Agency does not agree with the commenters that the 14 day timeframe places a burden on owners and operators, the Agency has decided that States should have the flexibility to set their own time frame for notification. Therefore, today's rule requires a 14 day period, for self-implementation purposes, or an alternative period designated by the Director of an approved States. In addition, because of the need to provide for a self-implementing approach to today's final rule, owners and operators are required by § 258.54(c) (1) to also place a notice in the facility's operating record within 14 days of finding a statistically significant increase over background for one or more of the constituents listed in appendix I. Again the Director of an approved State may elect to modify this time frame.

7. Section 258.55 Assessment Monitoring

The proposed rule required initiation of Phase II sampling and analysis if the owner or operator determined that the ground water exhibited significant increases (or decrease in the case of pH) over background levels for two or more of parameters (1) through (15) or one or more of parameters (16) through (24) or the Appendix I VOCs. The purpose of this second phase of groundwater monitoring was to determine the nature and extent of the release to ground water. Triggering Phase II monitoring did not necessarily indicate a threat to human health and the environment. Rather, entering Phase II monitoring signaled the need to analyze for a more extensive list of ground-water analyses and to determine if any of these constituents have exceeded health-based trigger levels.

Proposed § 258.55(c) required owners and operators in Phase II monitoring to sample all wells and analyze those samples for all constituents identified in appendix II to determine which constituents were present at levels statistically significant above background concentrations. This activity was to be completed within 90 days of triggering Phase II monitoring or an alternate time period approved by the State. If the owner or operator determined that none of the Appendix II constituents exceeded background at statistically significant levels, pursuant to § 258.54(d), the State was to determine the appropriate frequency for repeated sampling and analysis of all appendix II constituents. Section 258.55(e) of the proposed rule allowed the owner or operator to return to Phase I monitoring if no constituents were detected above background levels during a specified time period. The State was to determine an appropriate period of time to require the owner or operator to remain in Phase II monitoring, based on consideration of specified factors, before allowing a return to Phase I.

If any appendix II constituents were detected at statistically significant levels over background in either the initial or repeated testing, the owner or operator was to notify the State within 14 days and within 90 days, and quarterly thereafter, sample and analyze for those constituents present above background. The State also was required under proposed § 258.55(d) to specify an appropriate frequency for a full appendix II analysis to determine if any additional constituents had entered the ground water at concentrations that exceed background at statistically significant levels. Proposed § 258.55(g) required the owner or operator to notify the State and submit a report on the concentration of any additional appendix II constituents detected above background levels within 14 days.

If any of the appendix II constituents were detected at a statistically significant level above the ground-water trigger level established under proposed § 258.52, the owner or operator was to notify the State, assess corrective measures required under § 258.56, and continue Phase II monitoring. Before assessing potential corrective measures, the owner or operator could demonstrate, under § 258.55(h) (4), that a source other than the landfill was causing the contamination or that the increase resulted from sampling or analytical error.

The Agency received several comments in favor of eliminating Phase II monitoring (now assessment monitoring) and requiring the owner or operator to implement corrective action once statistically significant increases of the Phase I monitoring parameters occurred. These commenters believe that Phase II monitoring will not result in increased environmental protection and will delay remedial activities. They believe that the elimination of Phase II monitoring will lead to more rapid implementation of corrective action.

The Agency believes that the owner or operator must determine what contaminants have entered the ground water and understand the extent of the plume to develop an efficient and effective corrective action program. The purpose of assessment monitoring (Phase II monitoring) is to evaluate, rather than detect, contamination. The Agency believes that this second phase of monitoring is essential for evaluating the nature and extent of contamination and has retained it in today's final rule.

The proposed rule did not require the owner or operator to continue Phase I monitoring after triggering Phase II monitoring requirements. In the preamble to the proposed rule, the Agency noted that States may require an owner or operator to continue occasional monitoring or particular Phase I monitoring parameters during Phase II monitoring, particularly if that State has established corrective action requirements that involve those parameters. Two commenters objected to the lack of continued monitoring and requested the Agency to require Phase I monitoring to continue after Phase II monitoring has been triggered. Because of the need to provide for a self-implementing approach to today's final rule, the Agency agrees that it is necessary to require continued semiannual monitoring for the appendix I constituents during assessment monitoring (or an alternative frequency, no less than annual, set by the Director of an approved State) and has amended § 258.55(d)(2) accordingly. Similarly, § 258.56(b) requires the owner or operator to continue monitoring for appendix I constituents along with the appendix II constituents during the evaluation of corrective measures.

The Agency received numerous comments on § 258.55 of the proposed rule. The majority of the comments received were on the list of constituents in appendix II. Other commenters addressed the following areas: Different phases of monitoring, full appendix II analyses, return to Phase I monitoring, background determination for appendix II constituents, monitoring frequency, and notification of contamination, to name a few. These comments, along with Agency responses, are discussed more fully in the following sections. This section also addresses comments on the

determination of the ground-water protection standard originally proposed in § 258.57.

a. List of Constituents

The Agency proposed a list of appendix II constituents that were known to pose a risk to human health and the environment and that could potentially migrate to ground water. The proposed constituents were similar to those used in compliance monitoring at hazardous waste disposal facilities under subtitle C of RCRA (40 CFR part 265 appendix IX). Appendix II, as proposed, included almost all of the appendix IX constituents, plus additional constituents that are not included on appendix IX (e.g., Superfund indicators). Several of the constituents that are listed in appendix IX, also proposed in appendix II, are suspected to have analytical problems and the Agency is considering their removal from the appendix IX ground-water monitoring list. The proposed appendix II list was chosen because any of the proposed constituents could be present in the wide variety of wastes disposed at MSWLFs and could be present in ground water beneath facilities at levels threatening to human health and the environment.

The Agency requested comment on the proposed list of 246 appendix II constituents. In general, the commenters thought the list was excessive with only one commenter supporting the list of constituents.

Several commenters suggested that the appendix II parameters instead be selected by the State based on site-specific factors such as operational history of the site, the type of waste accepted, and previous analytical data on leachate samples. However, as discussed in the proposed rule, this approach is unworkable for sites with no leachate collection system (including the majority of existing landfills). Additionally, it does not account for degradation processes occurring during constituent migration through the unsaturated zone and ground water. It would require periodic resampling of the leachate to account for the wide variations in leachate composition over time. The Agency also believes that it may be difficult to determine the types of wastes that may have been historically disposed in many MSWLFs. However in response to these comments requesting a site-specific list, the Agency is allowing approved States, in § 258.55(b), to modify the list of constituents in appendix II if it can be determined that a constituent is not reasonably expected to be in, or derived from, the waste contained in the unit. Approved State modification of the assessment monitoring parameter list may occur only in rare instances. These circumstances are discussed earlier in this preamble with regard to modification of the detection monitoring list of parameters (§ 258.54(a)). Under these circumstances, an approved State may conclude that some of the appendix II constituents are not appropriate for ground-water monitoring at that MSWLF.

A number of commenters requested that the Agency develop a new list of monitoring constituents consisting of compounds that have been identified in MSWLF leachate. This option had been considered for the proposed rule, but was rejected because of limitations of the MSWLF database. As explained in the proposed rule, EPA's current data on 59 landfills identifies 112 compounds that have been found in MSWLF leachate. In most cases, the list of constituents analyzed for at a particular landfill was unknown, so these data may not indicate the full range of constituents that may be found in MSWLF leachate. Further, many of these compounds present analytical problems or require specialized analytical methods making them inappropriate for routine analysis. For these reasons, a list of compounds limited to those found in MSWLF leachate was not proposed and has not been incorporated into today's final rule.

In response to the criticisms of the commenters, however, the Agency did reevaluate the list of appendix II constituents. The Agency considered two options for revising appendix II: (1) Finalizing appendix II as proposed; and (2) making specific additions and deletions from proposed appendix II.

The first option considered was finalizing appendix II as originally proposed. This would have resulted in a list of 246 compounds. The Agency chose not to finalize proposed appendix II, however, based on consideration of commenters' objections. In particular, commenters remarked that the list contained a number of compounds which either could not be measured using existing technology or presented analytical problems. Several commenters also objected to the naturally occurring compounds on the list such as calcium, magnesium, and sodium.

In response to numerous comments on the proposed constituents, the Agency has revised appendix II. As discussed below, the Agency evaluated specific additions to and deletions from proposed appendix II and adopted assessment monitoring constituents similar to those presently listed in appendix IX of 40 CFR part 264. Appendix II is not identical to appendix IX due to expected proposed revisions to appendix IX. The most up-to-date information concerning analytical methods, degradation products, hydrolysis products, and chemical properties (i.e., adsorption to soil) was used to develop appendix II, and also will be used to propose consistent revisions to appendix IX.

For several reasons, EPA believes that it is appropriate for constituents on appendix II to generally be consistent with the constituents required for compliance monitoring under subtitle C of RCRA. First, hazardous wastes were routinely disposed of in municipal solid waste landfills before the amendments to RCRA were promulgated in 1980 (45 FR 33154; May 19, 1980). Second, municipal solid waste landfills may receive hazardous waste from small quantity generators (SQG) and household hazardous waste (HHW). Multiple SQG's and multiple sources of HHW may collectively result in substantial quantities of hazardous wastes at MSWLFs. Further, MSWLFs may not have adequate engineering controls (e.g., either a natural or synthetic liner and a leachate collection system), to prevent hazardous wastes from contaminating ground water. For these reasons, the Agency believes it is appropriate to provide for consistency in selecting ground-water monitoring analyses for both solid waste and hazardous waste disposal facilities.

The specific additions to and deletions from proposed appendix II were based on: (1) The feasibility of determining compounds of concern in ground water by standard screening methods, and (2) comparison with the ground-water monitoring list for hazardous waste facilities. Appendix II as finalized consists of 214 constituents.

Fourteen constituents are added to proposed appendix II by today's final rule. Nine of these constituents currently are required for compliance monitoring for hazardous waste facilities. The remaining constituents have been added to appendix II because they have either been detected at high concentrations in ground water samples collected from RCRA subtitle D facilities or because they are likely to exist in the variety of wastes managed at MSWLFs and are of concern in the protection of human health and the environment. The constituents added to today's final appendix II will not necessarily add to the analytical costs of ground-water monitoring; however, because the additions are amenable by the same

scan methods capable of completing the final appendix II analysis. The constituents added by today's final rule are presented in Table I. Specific reasons for each of the additions are contained in the background document for today's final rule.

Thirty-nine constituents on proposed appendix II have been deleted by today's final rule. The list of deleted constituents is presented in Table 2. Several commenters suggested that several metals on appendix II could be found naturally in ground water, and, therefore, should not be used for assessment monitoring. The Agency agrees with the commenters. Although these metals are used by the Agency as Superfund indicator compounds, routine testing during assessment monitoring at all MSWLFs is not appropriate because they are not toxic at the levels found naturally in ground water. Another metal (fluoride) is found naturally as an inorganic ion, and was deleted for the same reason. Several commenters also suggested that a number of the proposed appendix II constituents (e.g., 1,3-benzenediol, oxirane, benzenethiol, hexachlorophene) are not easily detected by current analytical methods. The Agency reviewed appendix II and deleted twenty-nine constituents because of serious stability or analytical limitations by standard SW–846 methods. Specific reasons for each of the deletions are given in the background document for today's final rule. The Agency is similarly assessing the appropriateness of all appendix IX constituents based on consideration of the information used in the development of appendix II.

One commenter expressed concern about the monitoring requirements for dibenzofuran. The common name for, dibenzofuran in the proposed rule listed various poly-chlorinated dibenzofurans as well as the unchlorinated dibenzofuran. After further review of available ground-water information, the Agency deleted the polychlorinated dibenzofurans as well as 2,3,7,8-tetrachlorodibenzo-p-dioxin (including the polychlorinated dibenzo-p-dioxins) from appendix II because they have been analyzed for and have not been detected in ground-water samples collected from RCRA (municipal and hazardous waste) and CERCLA facilities because of their strong adsorption to soil and their low solubility. Because of their strong adsorption to soil, they also have rarely been detected in surface water. Additionally, these compounds require a special analytical GC/MS method dramatically increasing the cost of assessment monitoring. Therefore, after consideration of the practicable capabilities of owners and operators, and the fact that these contaminants are rarely found in ground water, EPA does not believe it is necessary to routinely require the owner or operator to analyze ground-water samples for these compounds as part of the assessment monitoring program. Although today's final rule does not require monitoring for these compounds, States are not precluded from requiring analyses for these compounds, on a site-specific basis. However, the unchlorinated dibenzofuran has been retained on appendix II, because it is amendable by Method 8270 which is a suggested method for analyzing other appendix II constituents during assessment monitoring.

The Agency notes that appendix II is likely to change over time as modifications are made in analytical methods for detecting contaminants. Today's final appendix II is based upon currently available analytical technology and consideration of the practicable capability of owners and operators of MSWLFs. With the development and standardization of new technologies and methods, appendix II will likely need future revisions. EPA believes that the list of constituents presented in appendix II of today's final rule meets the overall objective of assessment monitoring, that is, to ensure monitoring which evaluates the nature of a release from a MSWLF to ground water.

Concurrent with the addition and deletion of certain compounds, other changes to appendix II have been made to eliminate confusion. The proposed appendix II was alphabetically ordered by systematic name. EPA decided to order the list by alphabetic common name, in keeping with the form used in other Agency lists. As requested by several commenters, the Agency also is including some suggested methods from Test Methods for Evaluating Solid Waste, Third Edition (SW–846) and estimates of a method-specific PQL for each constituent. Additionally, technical corrections to a number of name spellings have been made and several Aroclors are now listed under polychlorinated biphenyls.

Finally, the Agency believes that today's comprehensive list of appendix II constituents is essential for providing a check on the performance of the landfill design and operation. Under today's rule, owners and operators in approved States may design their landfill in accordance with a performance standard based on a more limited set of compounds (i.e., MCLs) (see § 258.40). As discussed earlier in this preamble, EPA limited this performance standard to constituents with EPA approved standards (i.e., MCLs) to provide an approach that could be effectively implemented considering the technical capabilities of the regulated community. EPA believes it is appropriate to specify a comprehensive list of compounds for assessment monitoring for two reasons. First, such a comprehensive list will provide a "back-up" check for landfill design performance (i.e., liner and leachate collection system requirements). Second, the owner or operator is required to routinely evaluate only those appendix II constituents that are detected in the ground water, thereby limiting impacts on the owner or operator.

TABLE 1.—ADDITIONS TO APPENDIX II

Common name	CAS RN
2-Chloroethyl ethyl ether	628–34–2
m-Cresol; 3-Methylphenol	108–39–4
Diallate	2303–16–4
cis-1,2-Dichloroethylene	156–59–2
1,3-Dichloropropane; Trimethylene dichloride	142–28–9
2,2-Dichloropropane; Isopropylidene chloride	594–20–7
1,1-Dichloropropene	563–58–6
Dimethoate	60–51–5
Endosulfan sulfate	1031–07–8
Ethyl methanesulfonate	62–50–0
p-Phenylenediamine	106–50–3
o-Toluidine	95–53–4
O,O,O-Triethyl phosphorothioate	126–68–1
sym-Trinitrobenzene	99–35–4

TABLE 2.—DELETIONS FROM APPENDIX II

Common name	CAS RN
Allyl alcohol	107–18–6
Aluminum	7429–90–5
Aniline	62–53–3
Benzidine	92–87–5
Benzoic acid	65–85–0
p-Benzoquinone	106–51–4
Calcium	7440–43–9
2-Chloroethyl vinyl ether	110–75–8
3-Chloropropionitrile	542–76–7
Dibenzo[a,i]pyrene	189–55–9
Dibenzo[a,e]pyrene	192–65–4
Dibenzo[a,h,]pyrene	189–64–0
Dibenzofurans (tetra-, penta-, and hexachlorodibenzofurans)	132–64–9
1,4-Dioxane	123–91–1
3,3'-Dimethoxybenzidine	119–90–4
alpha,alpha-Dimethylphenethylamine	122–09–8
1,2-Diphenylhydrazine	122–66–7
Ethylene oxide	75–21–8
Fluoride	16984–48–8
Hexachlorophene	70–30–4
Iron	7439–89–6
Magnesium	7439–39–4
Malononitrile	109–77–3
Manganese	7439–96–5

TABLE 2.—DELETIONS FROM APPENDIX II—Continued

Common name	CAS RN
4,4'-Methylenebis(2-chloroaniline)	101-14-4
N-Nitrosomorpholine	59-89-2
Osmium	7440-04-2
Pentachloroethane	76-01-7
2-Picoline	109-06-8
Potassium	7440-09-7
2-Propyn-1-ol; Propargyl alcohol	107-19-7
Pyridine	110-86-1
Resorcinol	108-46-3
Sodium	7440-23-5
2,3,7,8-Tetrachlorodibenzo-p-dioxin	1746-01-6
Tetraethyl dithiopyrophosphate; Sulfotepp	3689-24-5
Thiophenol; Benzenethiol	108-98-5
Trichloromethanethiol	75-70-7
Tris(2,3-dibromopropyl) phosphate	126-72-7

b. Different Phases of Monitoring

The proposed rule required that once one well triggered Phase II monitoring, all wells monitoring the unit were to be sampled and the ground water analyzed for the appendix II constituents. In the preamble to the proposed rule, the Agency requested comment on whether different wells at the same unit or facility should be allowed to be in different phases of monitoring. In other words, some wells would be in Phase I monitoring while other wells would be in Phase II monitoring. In the preamble to the proposed rule the Agency stated that this option could be appropriate in situations where the unit was very large and only a few monitoring wells had triggered the next phase of monitoring, however, once corrective action had been triggered in one well, all of the ground-water surrounding the particular waste management unit would be subject to corrective action provisions. Several commenters supported the idea of allowing different wells to be in different phases of monitoring given the complexity of the movement of leachate, attenuation, dispersion, and ground water movement.

The Agency agrees that, in situations where larger MSWLFs are surrounded by a great number of wells, and the hydrogeology of the area is well known, it may be practical and cost-effective to sample and analyze a subset of wells for both the complete list of appendix II constituents and for the appendix II constituents detected as a result of the complete analysis. The Agency believes that States with approved programs should have the flexibility to make the determination regarding the specific wells to be included in assessment monitoring. Therefore, § 258.5(b) and § 258.55(d)(2) of today's final rule affords the Director of an approved State the flexibility to specify an appropriate subset of wells to be sampled and analyzed during assessment monitoring. This means that some wells would advance to assessment monitoring while all would remain in detection monitoring. However, during corrective action, the owner or operator is required to comply with the ground-water protection standard at all points within the plume of contamination that lie beyond the ground-water monitoring well system (§ 258.58(e)). This will very likely necessitate that all wells be incorporated into the corrective action program. In consort with the self-implementing nature of today's rule, owners and operators of MSWLFs in unapproved States must sample and analyze all wells during assessment monitoring.

c. Appendix II Analysis

The proposed rule, § 258.55(c), required the owner or operator to sample and analyze ground-water for the constituents listed in appendix II within 90 days of triggering Phase II monitoring or an alternate time period approved by the State. If appendix II constituents were not detected, § 258.55(d) required the State to determine an appropriate frequency for repeated sampling and analysis for appendix II constituents during the active life, closure, and post-closure care of the unit. In setting the appropriate frequency, the State was to consider: (1) Lithology of the aquifer and unsaturated zone; (2) hydraulic conductivity of the aquifer and unsaturated zone; (3) aquifer flow velocities; (4) minimum distance of travel; and (5) nature of any constituents detected. The purpose of this provision was to determine if any additional constituents entered the ground water over time. The Agency proposed to allow States to set the frequency for repeated full appendix II analyses because the Agency believed that site-specific conditions will have a significant impact on the release of any new constituents to ground water from a MSWLF.

A number of commenters objected to the requirement for repeated appendix II analyses, stating that it would be burdensome for MSWLF owners and operators to repeatedly analyze for over 200 constituents. Other commenters argued that the amount of data generated by repeated sampling would be burdensome for States to review. Another commenter felt that EPA should set a maximum limit on the number of scans that could be required within a given period of time while two commenters suggested that the full appendix II list be analyzed annually.

As stated in the preamble to the proposed rule, the Agency believes that periodic analyses for all appendix II parameters are essential to ensure detection of ground-water contamination and for use in determining whether the design of an ongoing corrective action program must be changed to accommodate the treatment or removal of additional constituents. The Agency also believes it is necessary to include a specific requirement for repeated, complete appendix II analyses because of the need to provide for a self-implementing approach to today's final rule. Therefore, the Agency is continuing to require repeated appendix II analyses, as modified below (see § 258.55(c)(2)).

In determining an appropriate frequency for repeated full appendix II analysis, the Agency considered the similarities in the ground-water monitoring programs for MSWLFs and hazardous waste facilities. Because owners and operators of hazardous waste facilities are required to conduct yearly analyses for a comprehensive list of constituents (similar to appendix II) during compliance monitoring (which is similar to assessment monitoring) to determine the presence of additional constituents, the Agency also set an annual monitoring frequency for repeated full appendix II analyses for MSWLF units conducting assessment monitoring. This minimum frequency will serve to ensure protection of human health and the environment from ground-water contamination resulting from MSWLFs. This requirement is found in § 258.55(b) of today's final rule. More frequent analysis is still required for detected constituents as discussed below.

To address commenters' concerns regarding the burdensome nature of this requirement, the Agency is providing approved States with the flexibility to reduce the frequency of the repeated full appendix II analyses (see § 258.55(b)). An approved State is required to consider the following factors in assessing the appropriate monitoring frequency for repeated full appendix II analyses: (1) Lithology of the aquifer and unsaturated zone; (2) hydraulic conductivity of the aquifer and unsaturated zone; (3) aquifer flow velocities; (4) minimum distance between upgradient edge of unit and downgradient monitoring well screen (minimum distance of travel); (5) resource value of the aquifer and (6) nature of any constituents detected. These are the same factors identified for

State consideration in the proposed rule for determining an alternate frequency for the repeated full appendix II analysis.

The proposed rule also required owners and operators to notify and submit a report to the State within 14 days of identifying appendix II constituents that had not been identified through previous monitoring. This has not changed in today's final rule. Section 258.55(d)(1) requires that within 14 days of detecting appendix II constituents through the initial or subsequent sampling events in assessment monitoring the owner and operator: (1) Place a notice in the operating record identifying the detected appendix II constituents and (2) notify the State Director that this notice has been placed. The Director of an approved State program may modify this time period.

d. Detection of Appendix II Constituents in Ground Water

If any appendix II constituents were detected at statistically significant levels above background, § 258.55(f) of the proposed rule required the owner or operator to: (1) Notify the State within 14 days, or an alternative period approved by the State; and (2) within 90 days, and quarterly thereafter, conduct analyses for those appendix II constituents that were present at levels above background. The State was allowed to determine the appropriate monitoring frequency during the post-closure period upon consideration of: (1) Lithology of the aquifer and unsaturated zone; (2) hydraulic conductivity of the aquifer and unsaturated zone; (3) aquifer flow velocity; (4) minimum distance of travel; and (5) the nature of the detected constituents.

One commenter remarked that to determine statistically significant increases of appendix II constituents over background would require a background determination for all of the constituents listed in appendix II, which would be beyond the practicable capability of most MSWLF owners and operators. The Agency reevaluated this requirement and agrees that it would require extensive sampling and analysis to determine background concentrations for all of the appendix II constituents in order to determine if a statistically significant increase over background had occurred. Therefore, § 258.55(d)(2) of today's final rule requires owners and operators to continue semiannual monitoring only for those constituents that are detected in ground water as a result of a complete appendix II analysis. In addition, today's rule provides flexibility for the Director of an approved State to specify a monitoring frequency, other than semiannually, for those constituents that are detected in ground water as a result of a complete appendix II analysis. This flexibility is discussed later in this section. So that owners and operators may determine whether appendix II constituents have exceeded the ground-water protection standard at statistically significant levels, § 258.55(d)(3) of today's final rule also requires the owner or operator to establish background concentrations only for appendix II constituents that have been detected in ground water.

The Agency does not mean to suggest, however, that owners and operators should delay sampling of background wells during the first assessment monitoring sampling event until constituents have been detected in downgradient wells. The owner and operator should simultaneously collect ground-water samples from both the background and downgradient wells and send both sets of samples to the laboratory with instructions to first analyze downgradient wells for appendix II constituents and to delay analysis of the background ground-water samples until the results of the downgradient ground-water analysis are available. EPA encourages owners and operators to determine the concentrations of a constituent in the samples through the use of one-point-in-time comparisons between background and downgradient wells. This approach will help reduce the components of seasonal variation by providing for simultaneous comparisons between background well and downgradient well monitoring data. For additional discussion of this approach, see the preamble discussion in 53 FR 39720 (October 11, 1988) concerning the determination of background concentrations and their relationship to statistical analysis of ground-water monitoring data and at RCRA facilities.

Regardless of the sampling delay, the Agency wishes to emphasize that § 258.53 requires each owner or operator to maintain sampling and analysis program documentation that includes procedures and techniques designed to ensure accurate representation of ground-water quality. After the detected appendix II constituents are identified, the owner or operator must analyze the background ground water samples for those constituents and establish background. The Agency believes this procedure will be within the economic means of most MSWLF owners and operators.

In response to statistically significant increases in appendix II constituents, the proposed rule required the owner or operator to conduct quarterly analyses for those appendix II constituents. Section 258.55(f)(3) of the proposed rule did, however, provide the State the flexibility to determine an appropriate minimum monitoring frequency for the detected appendix II constituents during the post-closure period, considering the following list of factors: (1) Lithology of the aquifer and unsaturated zone; (2) hydraulic conductivity of the aquifer flow velocity; (3) minimum distance of travel (i.e., MSWLF unit edge to downgradient wells); and (4) the nature of the detected constituents.

In general, most commenters stated that quarterly monitoring is excessive and not needed in all situations and recommended that the frequency be determined on a case-by-case basis. After careful review of these comments the Agency agrees that the requirement for quarterly monitoring during the active life and closure may not be necessary in some circumstances. For example, the Agency believes that quarterly assessment monitoring would not be cost-effective for owners and operators of MSWLFs located in areas with low ground-water flow velocities. The Agency believes that, based on the specifics of the MSWLF site, States should have the flexibility to determine an appropriate frequency for repeated sampling and analysis not only during the post-closure period, but the active life (including closure) as well. This flexibility also addresses the practicable capabilities of owners and operators by allowing less than quarterly analysis in situations where it is not absolutely necessary. It should be noted that today's rule does not preclude States from requiring more frequent monitoring if it is warranted.

Therefore, § 258.55(d)(2) of today's final rule provides flexibility for the Director of an approved State to specify a monitoring frequency, other than semiannually, for those constituents that are detected in ground water as a result of a complete appendix II analysis during the active life, closure, and post-closure care period. The Director of an approved State is required to consider the same factors that were listed in the proposed rule for setting an alternative frequency during the post-closure period. These same factors are used to determine an alternative frequency for the full appendix II analysis (see § 258.55(b)).

Because of the self-implementing approach to today's final rule, the Agency is allowing only approved States to determine an alternative monitoring frequency for the detected

appendix II constituents during the active life, closure and post-closure care period. Owners and operators of landfills located in States without approved programs are required to continue semiannual monitoring for detected appendix II constituents throughout the active life, closure, and post-closure care period.

e. Return to Detection Monitoring

Under the proposed rule, if the owner or operator determined that there had not been a statistically significant increase in any appendix II constituents over background, after conducting monitoring for a State approved period of time, § 258.55(e) of the proposed rule allowed the unit to return to Phase I monitoring. (A statistically significant increase over background was the trigger for requiring quarterly monitoring for that constituent.) In determining an appropriate period of time for appendix II monitoring before allowing return to detection monitoring, the State was to consider the following four factors: (1) Lithology of the aquifer and unsaturated zone; (2) hydraulic conductivity of the aquifer and unsaturated zone; (3) ground-water flow rates; and (4) minimum distance of travel.

In general, commenters supported the proposed provision allowing an owner or operator to return to the previous phase of monitoring. Therefore, the Agency has retained this concept in § 258.55(e), but has modified it by adding a minimum time period during which monitoring must be conducted before allowing a unit to return to detection monitoring. This will make it consistent with the self-implementing approach in today's rule.

In the preamble to the proposed rule the Agency requested comments on the appropriateness of a minimum time period during which monitoring must be conducted before allowing a unit to revert to the previous phase of monitoring. Two commenters suggested specific monitoring periods; two monitoring intervals and three consecutive quarterly analyses. The majority of commenters requested that this minimum time period remain site-specific.

The Agency agrees with the commenter's suggestion of a minimum of two monitoring intervals without detection of appendix II constituents is necessary before a facility may return to detection monitoring. The Agency believes that this requirement for two consecutive sampling events will reduce the probability of false-negatives (false negatives occur when monitoring fails to detect contamination or an increase in a concentration of a hazardous constituent). In addition, by specifying a specific time period, the Agency is providing for the self-implementing structure of today's rule. Therefore, § 258.55(e) of today's rule allows an owner or operator to return to detection monitoring if the concentrations of all appendix II constituents are at or below background, using the statistical procedures in § 258.53(g) for two consecutive sampling events.

The Agency believes that this approach balances protection of human health and the environment with the practicable capabilities of owners and operators. It considers the practicable capability of the owner or operator by not requiring repeated analysis of the ground water for the complete list of appendix II constituents, which may yield the same negative results. It is protective of human health and the environment, as is required by § 258.53(c) of the rule, because the owner or operator is still required to continue to monitor the ground-water and respond to statistically significant changes in ground water quality. Once a unit has returned to detection monitoring, the owner or operator will be required to establish an assessment monitoring program if subsequent monitoring indicates a statistically significant increase of any appendix I constituent over background levels. This will, once again, require the owner or operator to sample all monitoring wells, or in approved States, an appropriate subset of monitoring wells. The ground water samples collected must then be analyzed for all of the constituents listed in appendix II.

For the purpose of clarification, today's rule also includes a new § 258.55(f). This addition simply states that if the concentration of any appendix II constituents are above background, but all concentrations are below the ground-water protection standard, the owner or operator must continue assessment monitoring.

f. Plume Characterization

Under the proposed rule, § 258.56(b), the State could require an owner or operator to conduct additional monitoring in order to characterize the nature and extent of the plume. This provision implied that characterization of the plume may require the installation of several additional monitoring wells. The Agency's rationale for this provision was that the distribution of contaminants must be delineated to properly define the extent of the area to be addressed by the corrective action program.

One commenter remarked that EPA should require a thorough definition of the problem that may exist at a facility prior to the initiation of corrective measures. The commenter stated that if the site-specific hydrogeologic and ground-water quality characteristics are not understood, attempts to remediate the facility may fail. The Agency agrees that a thorough understanding of the contamination and the hydrogeology of the site is essential to creating a corrective action program. Therefore, this concept has been retained in today's final rule.

Section 258.55(g)(1)(i) of today's final rule requires the owner or operator to characterize the nature and extent of the release, once the ground-water protection standard has been exceeded, by installing additional wells, as necessary. Circumstances that may require additional monitoring include: (1) Facilities that have not determined the horizontal and vertical extent of the contaminant plume; (2) locations with heterogeneous or transient ground-water flow regimes; and (3) mounding associated with MSWLF units. In these situations, an owner or operator may be required to install additional wells. However, because the requirements for additional monitoring are site-specific, the Agency is not able to set requirements for cases where additional monitoring is required nor the number of additional wells that must be installed. The Agency maintains that characterization of the release is critical in designing and implementing corrective action programs if ground-water remediation is necessary. The purpose of these additional wells is to delineate the contaminant plume boundary and to eventually demonstrate the effectiveness of corrective action in meeting the ground-water protection standard. Additional wells installed for this purpose are not subject to the assessment monitoring requirements for Appendix II analyses.

In the subtitle C program for hazardous waste facilities, the Regional Administrator has the authority to require the installation of additional monitoring wells to characterize ground water. Due to the decision to provide a self-implementing approach to today's final rule and in response to the comment that EPA should require a thorough definition of any ground-water contamination problem prior to mandating corrective action, the Agency has also added the requirement that the owner or operator install at least one additional well at the facility boundary in the direction of contaminant migration (§ 258.55(g)(1)(ii)). This well must be sampled semiannually, or an alternative frequency determined by the

Director of an approved State, and the ground water samples analyzed for the Appendix II constituents that have been detected in the wells located at the unit or alternative boundary. The Agency added the specific requirement of a well at the facility boundary so that the owner or operator will be able to determine when contaminants have migrated past the facility boundary so that affected persons who own or reside on land overlying the plume may be notified. It should be noted that although § 258.55(d)(2) allows the Director of an approved State to determine an appropriate subset of wells to be sampled and analyzed for the detected Appendix II constituents, the Director of an approved State must always include this one additional well in the sampling and analysis program.

The Agency recognizes that it may be difficult in certain circumstances to characterize the nature and extent of the plumes that have moved off-site. In limited cases, the owner or operator may have difficulty obtaining permission from adjacent land owners to install additional wells on their property. Nevertheless, the Agency expects owners and operators to make every effort to fully characterize the nature and extent of the contamination.

Section 258.58(a)(3) of the proposed rule required the owner or operator to notify all persons who own or reside on land that directly overlies any part of the plume of contamination. This notification was to be sent if any Appendix II constituents were detected at a statistically significant level above the ground-water protection standard. Several commenters addressed the notification requirement that was proposed.

Two issues were raised by commenters: The scope of any notice and the timing of the notice. Commenters suggested expanding the scope of those receiving notice of contamination beyond that required in the proposed rule. These commenters argued that this notice should not be limited to land owners and local residents who own or reside on land that overlies a contaminated plume, but also should include owners of mineral rights and owners of permits to applicable surface and ground water, as well as to local officials such as fire, health, school and transportation officials.

The Agency agrees that it is important for those persons whose uses of the ground water may be affected, including those who own or reside on land overlying the plume and those whose drinking water may be affected, to be made aware of potential risks. However, the Agency believes it would be difficult for a MSWLF owner or operator to identify and notify all persons whose uses of ground water could be affected. Therefore, the Agency is retaining the proposed requirement that the owner or operator notify individuals owning or residing on land overlying the plume of contamination (see § 258.55(g)(1)(iii)).

The Agency does, however, agree with the commenter who suggested that the MSWLF owner or operator be required to notify local authorities of ground-water contamination resulting from a release from the MSWLF. The Agency has, therefore, broadened the scope of the proposed notification to include appropriate local government agencies or officials, as well as persons owning or residing on land overlying the plume of contamination. Section 258.55(g) of today's final rule requires that notification be sent to local government officials or agencies once it has been determined that constituents have been detected at statistically significant levels above the ground-water protection standard. The Agency understands that in the case of MSWLFs that are owned or operated by local governments, the additional reporting requirement in today's final rule will mean that one local government agency or official may be notifying another agency or official of the same municipality. The Agency still feels the expanded notification requirement is necessary to ensure that all appropriate government officials and agencies are notified.

It also was suggested by commenters that the timing and method of notification be specified in more detail than in the proposed rule. These commenters felt that the notification should be required immediately upon detection of contamination, and that the language and structure of the proposed rule does not adequately indicate this.

At the request of the commenters, the Agency evaluated the timing of the required notice, and consequently changed the timing of the notice from the proposed rule. The Agency agrees that it is important to quickly notify individuals of potential ground-water contamination. Today's final rule requires the owner or operator to notify owners or residents of land overlying the plume of contamination if sampling of the well located at the facility boundary, (required by § 258.55(g)(1)(ii)), indicates that contaminants have migrated off site. However, the earliest an owner or operator of a MSWLF that is contaminating ground water can notify residents of land overlying a plume is when the nature and extent of contamination has been identified. Nevertheless, MSWLF owners and operators can quickly notify local government officials well before the plume is fully characterized. Therefore, as discussed above, today's rule requires the owner or operator to notify appropriate local government officials within 14 days of finding a statistically significant increase over the ground-water protection standard. These officials can then work with the owner or operator in determining if certain others should be notified prior to plume characterization. Note that § 258.50(g) provides flexibility for the Director of an approved State to alter this time for notification.

In summary, if any appendix II constituent is detected at a statistically significant level above the ground-water protection standard, § 258.55(g) requires the owner or operator to: (1) Notify the State and local government officials and place a notice in the operating record within 14 days or within another timeframe specified by the Director of an approved State; (2) characterize the nature and extent of the release, which may require the installation of additional monitoring wells; (3) install at least one monitoring well at the facility boundary in the direction of contaminant migration; (4) notify all persons who own or reside on land overlying the plume if contaminants have migrated off-site. In addition, the owner or operator is given the opportunity through § 258.55(g) (2) to demonstrate that a source other than the MSWLF caused the contamination or that the statistically significant increase resulted from an error in sampling, analysis, or evaluation. This demonstration must be certified by a qualified ground-water scientist or approved by the Direction of an approved State and placed in the facility's operating record.

g. Ground-Water Protection Standard

The proposed rule required States to set ground-water protection standards (GWPS), when selecting a remedy, for each appendix II constituent detected above trigger levels. The GWPS was to represent the constituent concentrations that remedies were to achieve. The proposed rule established the State's primary consideration when setting the GWPS to be to ensure protection of human health and the environment. The proposed rule allowed the State to use promulgated health-based standards, such as Maximum Contaminant Levels (MCLs), where they are available. In cases where promulgated standards are not available, the proposed rule allowed the State to set a GWPS for carcinogens

that would achieve a level of protection within a risk range of 1×10^{-4} to 1×10^{-7}. The proposed rule allowed the State to take site-specific exposure considerations into account when establishing the GWPS and to take into account the reliability of the remedy when establishing the standard. If the MSWLF owner or operator could demonstrate to the State that a detected contaminant was already present in the ground water, then the State was not to set the GWPS above the background level unless the State determined that clean up below the background level was necessary to protect human health and the environment and the clean up was in connection with an area-wide remedial action under other authorities.

The majority of the commenters, including several States, argued that the States should not bear the responsibility of establishing the level to which ground water should be cleaned. The commenters argued that the States do not have the financial or technical resources to undertake this task and that the lack of a federal standard would result in inconsistent standards nationally. Many commenters contended that federal standards should be established to ease the rule's burden on States and to allow States to devote State resources to making decisions on appropriate remedies. Some commenters argued against allowing States to establish GWPS on a site-by-site basis due to concerns that the State would take cost considerations (that would not ensure protection of human health and the environment) into account when setting the standard. EPA also received comments supporting and rejecting the use of MCLs as the GWPS. One State commented that all GWPS should be set at background levels or below the MCL. One commenter suggested that EPA abandon the use of MCLs in setting the GWPS because in the commenter's opinion, they are overly conservative and non-health related.

The Agency agrees that in many cases States have limited resources available to establish clean-up standards for a large number of compounds. EPA has partially addressed this concern by deleting the requirement for establishing trigger levels for all appendix II constituents prior to the initiation of ground-water monitoring (§ 258.52), and instead, today's rule is requiring the establishment of clean-up standards (i.e., ground-water protection standard) only for those compounds that have been detected in assessment monitoring (see preamble discussion on § 258.52).

In determining the approach for the ground-water protection standards in the final rule, EPA also considered the decision to provide for self-implementation. Under this approach, owners and operators are able to implement the final rule without interaction with the State.

In order to respond to public comments, as well as incorporate the Agency's self-implementing approach, today's final provisions regarding the ground-water protection standard require the ground-water protection standard to be either the MCL or background, except in approved States which may set alternative levels. While the Agency prefers to use site-specific health based standards and the use of background concentrations may be overly conservative in some cases, this approach was necessary to incorporate the self-implementing approach in today's rule.

Specifically, today's final rule requires the MSWLF owner or operator, rather than the State, to set the GWPS at the MCL or background for all appendix II constituents detected at a level above background. GWPS must be set at the MCL for all appendix II constituents for which there is a promulgated level under section 1412 of the Safe Drinking Water Act. If there is no MCL promulgated for a detected constituent, then the GWPS must be set at background. In cases where the background level is higher than the promulgated MCL for a constituent, the GWPS is to be set at the background level.

Today's rule also allows approved States to establish an alternative GWPS, for constituents without an MCL, that is an appropriate health-based level based upon specific criteria. Any alternative GWPS must be set at a level derived in a manner consistent with Agency guidelines for assessing the health risks of environmental pollutants and must be based on scientifically valid studies conducted in accordance with the Toxic Substances Control Act Good Laboratory Practice Standards or other equivalent standards. In the case of setting an alternative GWPS for carcinogens, the alternative level must be associated with a risk level within the risk range specified by today's final rule, as discussed below. In the case where an approved State decides to set an alternative GWPS for a toxic chemical that causes an effect other than cancer or mutations, the alternative level must be equal to a concentration to which the human population could be exposed on a daily basis without appreciable risk of deleterious effects during a lifetime.

In the preamble to the proposed rule, EPA specifically requested comment on the appropriateness of the 1×10^{-4} to 1×10^{-7} risk range for carcinogens. Few comments were received specifically addressing the proposed risk range. Some commenters were concerned that the range was not protective of human health and the environment, while other commenters agreed that this range was appropriate and protective. One commenter objected to the risk range proposed by the Agency because it implied that States could not choose more protective goals. In addition to these specific comments, the Agency received many comments that argued that the proposed rule in general was too stringent and burdensome.

As mentioned above, in today's final rule the Agency is allowing approved States to set an alternative ground-water protection standard, for carcinogens, within a risk range of 1×10^{-4} to 1×10^{-6}. The Agency recommends that States use 1×10^{-6} as the point of departure for establishing the GWPS. This starting point is generally consistent with historical Agency practices. However, a variety of practical, site-specific factors (e.g., the reliability of exposure data and the weight of scientific evidence) may require that the standard deviate from this risk level. These site-specific factors will enter into the determination of where within the risk range the GWPS should be established. The risks to an individual should not exceed 1×10^{-4}. Because this alternative GWPS can only be set by approved States, and must be consistent with EPA guidelines for assessing health risks, the Agency believes that this approach is protective of human health and the environment.

Although today's final rule sets a risk range of 1×10^{-4} to 1×10^{-6}, States are not precluded from setting a more stringent standard. There may be, other site-specific exposure factors that may indicate the need to establish a risk level for a particular contaminant that is more protective than 1×10^{-6}. These site-specific exposure factors may include: Human exposure from other pathways at the facility; population sensitivities; potential impacts on environmental receptors; and cross-media impacts.

The criteria and site-specific considerations for establishing alternative GWPS by approved States are essentially the same criteria and considerations established in the proposed rule to be followed by all States when establishing the GWPS. However, in response to comment (as mentioned above, commenters were concerned States would consider cost when setting the GWPS), today's final

rule does not allow the State to consider the "reliability, effectiveness, practicability, or other relevant factors of the remedy" when establishing an alternative GWPS. The Agency eliminated this consideration from the final rule for two reasons.

First, the GWPS in today's final rule is being used somewhat differently than in the proposed rule, which established both a trigger level (an environmental- or health-based goal) and a ground-water protection standard (the actual clean-up standard set after consideration of cost, technical feasibility, etc.). As discussed earlier in this preamble, in response to comments EPA is eliminating "trigger levels" and is establishing a single standard, the GWPS, in today's final rule. As used in today's final rule, the GWPS is similar to the proposed trigger level in that it is an environmental- or health-based standard that is used as the goal for clean-up. Used in this context, it is inappropriate for remedy factors, including cost, to be considered in setting the GWPS.

However, several opportunities for considering the costs and technical feasibility are provided in today's final rule. For example, today's final rule allows the owner or operator to evaluate the costs of a remedy in assessing the corrective measures (§ 258.56(c) (3)) and to evaluate their practicable capability, including a consideration of the technical and economic capability in selecting a remedy (§ 258.57(c) (4)).

In addition, as described in this appendix (under § 258.58(b)), if the owner or operator determines that the selected remedy cannot achieve the GWPS (i.e., due to technical infeasibility), the owner or operator can explore alternative remedies and receive a certification that no current technology can achieve the GWPS. The owner or operator, however, is always responsible for controlling exposures and the source of the contamination.

h. Remediation to Below Background Levels

As proposed, the GWPS would not be set below background levels unless the State determined that clean up below background levels was necessary to protect human health and the environment and the clean up was connected with an area-wide remedial action under other authorities.

EPA received several comments from parties that were concerned that the Agency would, under some circumstances, require MSWLF owners and operators to be responsible for remediation below background levels. Commenters argued that landfill owners and operators should not be responsible for contamination that may have occurred as a result of other activities or from releases at other facilities. They further remarked that requiring clean up below background levels in effect places the cost of remediation on landfill owners and operators who are not solely responsible for the contamination.

EPA also received comments suggesting that MSWLF owners and operators should be required to be responsible for remediation below background. Some commenters argued that landfill owners and operators were legally obligated to restore the aquifer to its original condition and that the GWPS should be established to ensure this outcome.

As discussed in the preamble to the proposed rule, the Agency believes that it may not be reasonable to require the owner or operator to reduce the concentrations of hazardous constituents to below background levels. Therefore, today's final rule retains this concept and requires the owner or operator to clean up only to the background concentrations established for the MSWLF. The Agency recognizes that there may be circumstances where the ground water is contaminated by other sources upgradient, resulting in elevated background levels for the MSWLF. However, if the MSWLF is contributing to the existing contamination, today's final rule does not allow the owner or operator to ignore his contributions unless a determination is made by an approved State under § 258.57(e) that remediation is not required. Moreover, today's final rule does not preclude States from requiring an owner or operator to clean up contamination below background levels where it is warranted.

In today's final rule, EPA is requiring corrective action for ground-water releases. The legislative history accompanying section 4010 provides that a principal purpose of revising the part 257 criteria is the protection of ground and surface water and drinking water supplies. To that end, Congress directed the Agency to study the adequacy of the current solid waste disposal criteria in protecting human health and the environment from ground-water contamination (section 4010(a)). Moreover, in directing EPA to revise the existing criteria, Congress provided that such criteria revisions include ground-water monitoring as necessary to detect contamination and to allow for corrective action.

In view of the existence of other regulations providing for controls of other types of releases to other environmental media, the Agency believes it is adequately protecting human health and the environment by limiting the scope of the corrective action requirements in this rule to ground water releases. The Agency also intends to further study releases to soil and surface water by municipal solid waste landfills and make future revisions to the Criteria to require corrective action for these media. In the meantime, today's final rule includes several provisions to protect surface waters. Specifically, today's final rule requires run on/run off controls and requires that any discharge of pollutants from a MSWLF into waters of the United States must comply with regulations developed under the Clean Water Act. Furthermore, today's final rule includes location standards with respect to wetlands and floodplains.

Congress also has provided authority for controlling releases to other media under a number of statutes. The Clean Water Act (CWA) and Clean Air Act (CAA) can be used to address releases into surface water and air. The Federal Water Pollution Control Act can be used to address point and nonpoint releases to "waters of the United States" because it grants authorities for addressing surface water releases. The CAA can be used to address releases of some hazardous substances and particulates to the air. While the CAA is not directed specifically at the waste management industry, its authorities can be used to address releases to the air from waste management facilities. On May 30, 1991, EPA proposed New Source Performance Standards and Emission Guidelines for MSWLFs under the CAA to control emissions of non-methane organic compounds that contribute to ambient ozone problems and are a source of air toxics. A portion of the CAA program, the National Emission Standards for Hazardous Air Pollutants (NESHAPs) program has specified maximum emission levels for a number of particularly hazardous constituents. Furthermore, the Federal CERCLA program and other similar State-authorized clean-up programs can be used to address all media, though these programs are generally not preventative or regulatory in nature, and thus these authorities are typically used when there are no responsible parties available to clean up landfills that are no longer in operation.

The following is a discussion of the corrective action program. This section reviews the requirements to assess corrective measures (§ 258.56), to select a remedy (§ 258.57), and implement corrective action (§ 258.58).

8. Section 258.56 Assessment of Corrective Measures

Under the proposed rule, assessment of corrective measures would be required when any of the constituents listed in appendix II have been detected at statistically significant levels exceeding the ground water trigger levels. These trigger levels were to be health-based or environmental-based levels established by the State. The purpose of the assessment was to study potential corrective measures. The scope of the assessment was to be set by the State and the proposed rule specified several activities that the State could include in the study. These activities included: (1) Assessment of effectiveness of the remedy; (2) an evaluation of the performance, reliability, ease of implementation and impacts associated with the potential remedy; (3) timing of the potential remedy; (4) an estimation of costs; (5) institutional requirements; and (6) an evaluation of the public acceptability of alternatives. The State could also require the owner or operator to evaluate one or more specific potential remedies because the State could have knowledge of successful technologies used at other landfills with similar contamination problems. The proposed rule required that the owner or operator submit a report to the State on the assessment so that the State could choose which remedy should be implemented. The proposal also included a provision allowing the State to require the owner or operator to initiate interim corrective measures when necessary.

Comments on the concept of ground-water trigger levels and the Phase I and II structure of the ground-water monitoring program were discussed earlier in this appendix. Other general comments on the proposed § 258.56 approach and the Agency's response are summarized in the following discussion.

Several commenters identified a need for the assessment of the risk posed to human health and the environment by the release prior to proceeding with the corrective measures step. However, in attempting to simplify and streamline the corrective action program, the Agency did not incorporate the commenters' suggestions for a risk identification program. The Agency has allowed for an evaluation of the potential threats presented by ground-water contamination prior to requiring corrective action. For example, § 258.55(j) allows an approved State to consider exposure threats to sensitive environmental receptors and other site-specific exposure of potential exposure to ground water when setting the ground-water-protection standard; which is the level the selected remedy must achieve. Additionally, the owner or operator is given the opportunity, by § 258.55(g) (2), to demonstrate that the contamination is resulting from a source other than the landfill. Furthermore, several risk factors are evaluated during the remedy selection phase, such as magnitude of reduction of existing risks and potential for exposure of humans and environmental receptors.

Other commenters expressed support for the consideration of cost as a practical remedy assessment criteria (§ 258.56(c)(4)). The Agency is finalizing this criteria unmodified as § 258.56(c)(3). The Agency believes that the practicable capability of the owner or operator, including the capability to finance and manage a corrective action program, is an appropriate consideration in selection of a remedy, and cost, therefore, is an appropriate consideration for assessing corrective measures.

Several commenters expressed concern regarding the lack of deadlines to complete the required studies, arguing that the lack of deadlines would provide an opportunity for considerable delays before corrective measures are implemented. The Agency understands the commenters' concerns, but as previously mentioned, realizes that the extent of the corrective measure study must be commensurate with the complexity of the site. Recognizing the diversity of hydrogeologic characteristics and environmental problems, the Agency structured the corrective action program to provide flexibility in conducting the corrective measure study, while still requiring under § 258.56(a) that the assessment be completed within a reasonable timeframe. States are free to establish timeframes they deem appropriate.

One commenter suggested that the regulations should contain a bias to suspend operations. The final rule does not specifically identify conditions that call for the suspension of operations (or dictate any other specific corrective measures). The Agency has attempted to construct corrective action provisions which are broad and flexible enough to address the diversity of facilities, regional and site-specific considerations, technological approaches to corrective action, and remedial challenges without limiting remedial options or dictating pragmatically impossible solutions. Further, the Agency believes that automatic suspension of operations are generally unnecessary as a response to most releases and could cause serious disruptions in the solid waste management industry due to a reduction in disposal capacity, which is contrary to Congressional directives. While it will be appropriate under certain serious release scenarios to take significant and rapid remedial actions, the Agency believes that a bias for automatic closure of the MSWLF is unwarranted in most cases.

Another commenter was concerned that, as proposed, § 258.56(c)(6) did not expressly require public participation in the evaluation of corrective measures or the remedy selection process. This provision required that the assessment of potential remedies include an evaluation of public acceptability. The Agency agrees with the commenter that the public should be actively involved in the evaluation of corrective measures. The public, particularly in the vicinity of the facility, has a vested interest in the protection and remediation of the local environment. Therefore, § 258.56(d) of today's final rule requires the owner or operator to discuss potential remedies at a public meeting prior to the selection of a remedy. This requirement is intended to promote active and effective communication between the interested public, the owner or operator, and where appropriate, the responsible State regulatory agency.

As a result of the public comments discussed above and in previous sections of today's notice, the proposed approach to the assessment of corrective measures has been modified. Today's final rule requires the owner or operator to initiate assessment of corrective measures within 90 days of detecting any of the constituents listed in appendix II at statistically significant levels exceeding the ground-water protection standards (§ 258.56(a)). The purpose of the assessment is to study potential corrective measures. Section 258.56(a), as finalized, differs from the proposed approach in that it must be initiated when the ground-water protection standard is exceeded, rather than when the proposed ground-water trigger level is exceeded. The replacement of the trigger levels with the ground-water protection standards has been discussed earlier in this appendix.

Section 258.56(c), as proposed, has been replaced with proposed § 258.56(c)(1). The effect of this change, reflecting the self-implementing approach of today's final rule, is that the scope of the assessment is no longer set by the State. The removal of required State involvement has been discussed earlier in today's notice. However, the Agency

anticipates that most States will participate in the corrective action process and will play a role in setting the scope of the assessment.

As in the proposed rule, the final version of § 258.56(c) requires the owner or operator to assess the effectiveness of potential remedies in meeting the objectives of § 258.57 by addressing at least: (1) Performance, reliability, ease of implementation, and potential impacts; (2) the time requirements; (3) costs; and (4) institutional requirements.

In evaluating the performance, reliability, ease of implementation, and potential impacts of each remedy, the owner or operator should evaluate the appropriateness of specific remedial technologies to the problem being addressed and the ability of those technologies to achieve the GWPS. Analysis of a remedy's reliability should include an assessment of the effectiveness of the remedy in controlling the source of the release and its long-term reliability. EPA believes that long-term reliability of remedies is essential in ensuring protection of human health and the environment. Construction and operation requirements also should be evaluated. Finally, the owner or operator also should assess whether the remedy will cause intermedia transfer of contaminants.

The second criteria, timing of potential remedies, should include an evaluation of construction, start-up, and completion time. Timing is particularly important if contamination has migrated off-site. Cost is the third listed factor to be evaluated and may become important in the remedy selection process when evaluating alternative remedies that will achieve the same level of protection. EPA does not believe, however, that cost should be a determinative factor in assessing alternative remedies when they do not achieve the same level of protection. Finally, institutional requirements, such as local permit or public health requirements, may affect implementation of the remedies evaluated and should be assessed by the owner or operator.

Section 258.56, as finalized, does not include proposed § 258.56(d) through (f). These proposed regulations would have provided States with the authority to direct owners or operators to include certain remedies in the corrective measures assessment, required owners and operators to submit the corrective measures assessment study and direct the State to select a remedy, and allowed the State to require owners and operators to perform interim corrective actions. These proposals have been deleted as part of the self-implementing approach of the regulations finalized today. States may, however, adopt these types of requirements as part of State regulatory programs.

9. Section 258.57 Selection of Remedy

As proposed, § 258.57 outlined the general requirements for selection of remedies for MSWLFs. As structured, it established four basic criteria (§ 258.57(b)(1–4)) that all remedies had to meet. As proposed, these criteria would have required that States choose remedies that: (1) Are protective of human health and the environment; (2) attain the ground-water protection standard; (3) control the source(s) of releases so as to reduce or eliminate, to the maximum extent practicable, further releases of Appendix II constituents into the environment that may pose a threat to human health or the environment; and (4) comply with the specified standards for management of wastes. These criteria reflect the major technical components of remedies: cleanup of releases, source control, and management of wastes that are generated by remedial activities.

The proposed rule also specified decision criteria (§ 258.57(c)(1–5)) that would be considered by the State in selecting the most appropriate remedy: (1) Long and short term effectiveness, and degree of certainty of success; (2) effectiveness of remedy in controlling the source to reduce further releases; (3) ease or difficulty of implementation; (4) practicable capability of owner or operator, including technical and economic capability; and (5) community concerns. Additionally, the proposed rule outlined eight factors for setting schedules for initiating and completing remedies (§ 258.57(d)(1–8)). These factors include: (1) Extent and nature of contamination; (2) practical capabilities of remedial technologies; (3) availability of treatment or disposal capacity for wastes to be managed as part of the remedy; (4) desirability of utilizing emerging technologies not yet widely available; (5) potential risks to human health and the environment; (6) resource value of the aquifer; (7) practicable capability of the owner or operator; and (8) other relevant factors.

Proposed § 258.57 also included requirements for setting the ground-water protection standard (§ 258.57(e)), which, as discussed earlier, has been finalized as § 258.55(i) and (j). Section 258.57(f) proposed three remediation waiver options and § 258.57(g) provided States with the authority to require remediation despite a § 258.57(f) demonstration. Section 258.57(h) proposed specific requirements for achieving compliance.

Public comments were received on various aspects of the proposed remedy selection requirements: The scope of source control (§ 258.57(b)(3)); the practicable capability remedy selection factor (§ 258.57(c)(4)); the proposed approach to implementation schedules (§ 258.57(d)); the remediation waiver proposed under § 258.57(f); and the lack of public review or comment provisions on the selected corrective action remedy and schedule. Each of these areas are discussed further below.

a. Source Control

The proposed rule, § 258.57(b), required the State to select a remedy meeting four standards. One of these standards, § 258.57(b)(3), required that remedies control the source of the release so as to reduce or eliminate, to the maximum extent practicable, further releases of appendix II constituents into the environment. One commenter expressed concern that § 258.57(b)(3) does not limit the concept of source control to exclude disinterment and redisposal, despite preamble language identifying less disruptive types of source control. The commenter believes that such a limitation is necessary in light of the Agency and Congressional goal of avoiding disruption of solid waste management operations.

While the Agency agrees with the commenter that disinterment and redisposal are not the primary forms of source control envisioned in this subparagraph, there may be certain extreme cases where, due to the importance of the threatened aquifer or fragility of the underlying geology (such as Karst terranes), the most effective and expedient form of source control may be disinterment and redisposal. Thus, in keeping with the Agency's goal of providing flexible and broad criteria, today's final rule does not limit the definition of source control to exclude any specific types of remediation.

b. Practicable Capability

When selecting a remedy, § 258.57(c) of the proposed rule required the State to consider five factors. These factors were meant to aid the State in evaluating the data generated as a result of the corrective measures study. The Agency recognized that their relative importance in the decisionmaking process would vary from facility to facility.

The first two factors, long and short term effectiveness and reduction of future releases, are a measure of whether human health and the

environment will be protected while the remedy is being implemented and once it is completed. They also are a measure of whether the ground-water protection standard can be met. The third factor, implementability, is a measure of the variables affecting start-up of the remedy such as difficulty of construction, availability of equipment, and local permit requirements. The fourth factor, practicable capability, includes both the economic and technical capability of the owner or operator. The fifth factor, community concerns, requires the owner or operator to consider possible public reaction to the potential remedy selected.

One of these factors, § 258.57(c)(4), allowed the State to evaluate and consider the practicable capability of the owner or operator including a consideration of the technical and economic capability. Many comments were received on the ability of States to consider the practicable capability of MSWLF owners and operators when selecting a corrective action remedy. Half of the commenters supported consideration of practicable capability when selecting a remedy while the remainder of the commenters argued that practicable capability was not relevant in selecting a remedy. Instead they argued that selection of a remedy should be based solely on protection of human health and the environment.

The Agency believes that the practicable capabilities of the owner or operator to implement the corrective action program are vital to the overall success of the program. If the owner or operator cannot properly support and administer all phases of the corrective action program, the goals (protection of human health and the environment) may not be met, resulting in wasted expenditures of resources and continued environmental degradation. Consideration of practicable capability allows for the selection of the achievable remedy or combination of remedies that can meet the overall goal of protection of human health and the environment. Therefore, § 258.57(c)(4) of today's final rule continues to allow for the consideration of the practicable capability of owners and operators when selecting a remedy.

The Agency believes, however, that the evaluation factors provided by § 258.57(c), including practicable capability, are secondary to the standards of § 258.57(b) that require remedies to be protective of human health and the environment, attain the GWPS, control the source of the release, and comply with the § 258.58(d) standards for waste management. The evaluation factors in § 258.57(c) are to be used in evaluating one or more remedies meeting the standards of § 258.58(b) as a means to select the appropriate remedy. Therefore, the use of these factors should not compromise protection of human health and the environment.

One commenter argued that Congress did not intend that practicable capability be considered in the manner in which the Agency has incorporated it in the proposed rule. The commenter stated that the Congressional Record only referred to practicable capability in the context of how the criteria could be phased in. As discussed earlier in the preamble, the Agency believes that the legislative history underlying the subtitle D statutory amendments supports the Agency's application of "practicable capability." The Agency believes that, as discussed above, the statutory language of section 4010(c) and its legislative history indicate that congress intended that the technical and economic capability of owners or operators need to be considered to avoid serious disruptions in the disposal of solid waste. The Agency also believes that the consideration of practicable capability in selecting the remedy is not meant to reduce the level of protection of human health and the environment. This is so because despite any secondary consideration given to practicable capability in selecting a remedy under § 258.57(c)(4), the remedy must always be protective of human health and the environment under § 258.57(b)(1). Section 258.57(c) of today's final rule requires the owner or operator, rather than the State, to consider the five factors listed in the proposal when selecting a remedy. This change reflects the self-implementing approach of today's final rule. Of course, EPA expects many States, including all approved States, to be involved in the review and selection of remedies.

c. Schedule for Implementation

The proposed rule required the owner or operator to assess corrective measures and the State to select a remedy when appendix II constituents had been detected at a statistically significant level exceeding the trigger level (§§ 258.56(a) and 258.57(a)). As part of the remedy selection process, the State had to specify a schedule for initiating and completing remedial activities (§ 258.57(d)). The owner or operator would then implement the selected remedy when any appendix II constituents were detected at statistically significant levels above the ground-water protection standard (§ 258.58(a)).

Because the trigger level has been eliminated by today's final rule, § 258.56(a) and 258.57(a) require the owner or operator to assess corrective measures and select a remedy when appendix II constituents are detected at a statistically significant level above the ground-water protection standard. As part of the remedy selection process, the owner or operator is required by § 258.57(d) to specify a schedule for initiating and completing remedial activities. When setting this schedule, the owner or operator is required to consider eight factors. These factors are unchanged from the proposal. Today's final rule requires the owner or operator to set the schedule because of the need to provide for a self-implementing approach to today's final rule. However, EPA expects that most States, under State law, will establish schedules with the owner or operator for initiating and completing remedial activities.

One commenter stated that EPA should establish a time frame to prevent long administrative delays in implementing corrective action remedies. However, EPA is not setting a minimum time period in which remedial activities must be initiated because of the widely varying circumstances at facilities that require corrective action. EPA is requiring instead that activities begin within a reasonable period of time. The Agency expects that many different specific factors will influence the timing of remedies. For example, there may be a delay in acquiring the level of technical expertise required to implement a particular remedial technology. However, today's rule does require an owner or operator to take interim measures necessary to ensure the protection of human health and the environment prior to implementing the selected remedy (§ 258.58(a)(3)). If the State is an approved State, the Director will be able to establish alternative procedures.

d. Remediation Waiver

In the proposed rule, under § 258.57(f), EPA identified three situations in which the State may decide not to require cleanup of hazardous constituents released to ground water from a MSWLF. These situations were limited to cases where: (1) The ground water is contaminated by multiple sources and cleanup of the MSWLF release would provide no significant reduction of risk; (2) the contaminated ground water is not a current or potential source of drinking water and is not hydraulically connected with waters to which hazardous constituents are migrating or are likely to migrate in a concentration

that would exceed the ground-water protection standards in today's rule; or (3) remediation is not technically feasible or results in cross media impacts. In any case, however, the State could impose source control requirements (e.g., covers and/or flow control measures) to minimize or eliminate further releases (see proposed § 258.57(g)). The Agency did not attempt to define "significant reduction" in risk and requested comment on whether a specific definition was necessary.

A number of comments were received on these waivers. Some commenters strongly supported the inclusion of such waivers as means of ensuring that valuable resources are applied to corrective action measures in an appropriate and effective manner. Other commenters strongly opposed the inclusion of waivers and a number of commenters objected to § 258.57(f)(1) due to the lack of a definition of "significant reduction of risk".

After considering all the comments supporting and rejecting the waivers provided by proposed § 258.57(f), the Agency decided to allow approved States to waive the clean up requirements where the ground water is already contaminated by multiple sources and clean up of the MSWLF release would, in the approved State's opinion, provide no significant reduction of risk (§ 258.57(e)). The Agency understands and anticipates that approved States will have difficulties in defining "significant reduction of risk." For this reason, EPA believes that approved States should take a conservative approach when evaluating the relevance of such a waiver. The Agency does, however, anticipate that situations will arise where an approved State will determine that remediation of a release from a MSWLF cannot be justified based upon the presence of other sources of contamination or based on other extenuating circumstances that will result in no significant decrease in the level of risk from the contamination.

Other commenters were concerned that the proposed § 258.57(f)(2)(i–iii) waivers did not account for issues that would limit the ability of a State to predict changes in populations and future improvement in treatment technologies, and to determine hydraulic connections between aquifers. They requested that the Agency reevaluate the ability of States to issue remediation waivers under proposed § 258.57(f). The Agency considered the commenters' concerns but is continuing to allow approved States to determine that remediation of a release is not required (now § 258.57(e)).

EPA realizes that it is difficult to predict changes in populations (which determine whether ground water is reasonably expected to a source of drinking water) and future improvements in treatment technologies, or to determine hydraulic connection. However, the Agency believes, as discussed in the proposal, that certain circumstances may not merit remediation and the States should have the latitude to grant waivers in such cases and avoid unnecessary and unproductive expenditures. EPA believes that such waivers are to be granted only after an owner or operator meets the heavy burden of establishing that one or more or the criteria in § 258.57(e) have been satisfied. States are not precluded from requiring owners and operators to undertake other measures (e.g., source control) once the determination has been made that remediation is not required (§ 258.57(f)).

e. Public Participation

One commenter believes that the corrective action regulations should provide an opportunity for public review or comment on the selected remedy and proposed schedule. This commenter argued that allowing public input during the assessment study is insufficient and that additional opportunities for public involvement should be provided.

The Agency agrees that public participation is important in the selection of corrective action remedies because of the high potential for exposure to the population. As discussed earlier in the preamble, public participation requirements for approved States will be dealt with in a separate State program rulemaking. In addition, with respect to today's final rule, owners and operators of MSWLFs are required to discuss potential remedies at a public meeting prior to selection of the remedy (§ 258.56(d)).

10. Section 258.58 Implementation of the Corrective Action Program

The proposed rule required the corrective action program to be implemented when any Appendix II constituents were detected at statistically significant levels above the ground-water protection standard (proposed § 258.58(a)). To implement the corrective action program, the owner or operator had to comply with several requirements. First, the owner or operator had to establish and implement a corrective-action ground-water monitoring program that would demonstrate both the effectiveness of the remedy and compliance with the GWPS. Second, the owner or operator had to implement the remedy selected by the State under § 258.57. Third, the owner or operator had to notify all persons who own or reside on the land that overlies any part of the plume of contamination. Finally, at any time the State determined that actions were necessary to protect human health or the environment, it could require the owner or operator to conduct interim measures. The remedy would be considered complete when the GWPS had been achieved and all other actions required in the remedy had been completed (e.g., source control measures). The owner or operator would be released from the corrective action requirements after the State received a certification from an independent engineer, geologist, or other qualified person, and after the State determined that the remedy was complete. If the selected remedial technology was not capable of attaining the cleanup standard after reasonable efforts had been made by the owner or operator, the proposal allowed the State to require the owner or operator to evaluate and implement alternative technologies.

The Agency received several comments addressing the implementation of the corrective action program. One commenter indicated that the proposed rule, as implemented, would be inconsistent with CERCLA's cleanup and liability provisions. The commenter stated that the proposed rule does not provide for the participation in the investigation and cleanup by parties that might be liable under CERCLA. The commenter also indicated that the proposed rule does not allow owners or operators to challenge the assumption that contamination is from the landfill and not from the surrounding area. The commenter stated that the proposed rule effectively excludes MSWLFs from the CERCLA liability scheme and replaces it with present owner liability. Finally, the commenter asserted that under the proposed rule MSWLFs may never be listed on the National Priority List (NPL).

The Agency disagrees that the proposed rule is inconsistent with CERCLA. Today's final rule under RCRA focuses on managing solid waste correctly during the operation of the facility rather than relying on CERCLA to clean up these sites in the future. The corrective action required under this rule is not CERCLA remedial action, and therefore CERCLA standards do not apply. The Agency is well aware that where a cleanup proceeds under CERCLA authority, potentially responsible parties (PRPs) normally participate in the remedial process. Under today's final rule, however, corrective action is required under

RCRA authority, and therefore, potentially responsible parties under CERCLA are not involved in implementing corrective action.

The Agency also disagrees with the commenter's assertion that the proposed rule does not allow an owner or operator to demonstrate that contamination results from a source other than the landfill facility. Under § 258.54(d)(3) of the proposed rule and § 258.54(c)(3) of today's final rule, the owner or operator is allowed to make such a demonstration.

Similarly, the Agency does not agree that today's final rule exempts municipal solid waste landfills from the CERCLA liability scheme. These landfills are subject to CERCLA requirements to the same extent as any other facility or site. The fact that corrective action may be required under RCRA does not preclude potentially responsible parties from being liable under CERCLA. If a MSWLF warrants a CERCLA response action, all those parties liable under CERCLA section 107(a) will be subject to that action. It is the Agency's intent, however, that the corrective action required under today's rule will result in a facility not being subject to CERCLA liability because a release is prevented or remediated. RCRA provides adequate authority to require corrective action for releases and the Agency believes that these corrective action requirements provide MSWLFs with the necessary incentives to manage the waste correctly. Consistent with this, under today's rule, MSWLFs are not precluded from being listed on the NPL if they warrant being so classified.

Other commenters had concerns with the costs of corrective action. They indicated that it is important that each landfill operator be able to demonstrate the ability, both fiscally and technically, to fund and implement all foreseeable corrective measures. It was suggested that some financial security should be required to ensure this capability. Commenters expressed the view that the proposed rule does not provide for any consideration of costs in the selection of the appropriate corrective action, and that it is not reasonable to ignore the issue of economic feasibility.

The Agency agrees that it is important that owners or operators be able to demonstrate the financial ability to implement corrective action. This is why the proposed rule includes a financial assurance requirement in § 258.32. This assurance requires that landfill owners or operators who must undertake a corrective action program must establish financial assurance based on a recent estimate of the cost of the corrective action program. EPA has incorporated this financial assurance provision in today's final rule at § 258.73.

The Agency does not agree with commenters that cost consideration is not provided for in the selection of appropriate corrective action. As discussed earlier in the preamble, provisions in today's final rule also address the technical capability of the owner or operator to implement a corrective action program and provide for the consideration of costs in the selection of a remedy.

Public comments also were received on the requirements for interim measures, the period of compliance, and the alternative approach discussed in the preamble to the proposed rule. Each of these areas is discussed below.

a. Interim Measures

Section 258.58(a)(4) of the proposed rule required the owner or operator to take any interim measures deemed necessary by the State to ensure the protection of human health and the environment. In determining whether interim measures are necessary, the State was to consider seven factors including: (1) The time required to develop and implement the final remedy; (2) actual or potential exposure of nearby populations or environmental receptors to hazardous constituents; (3) actual or potential contamination of drinking water supplies or sensitive ecosystems; (4) further degradation of the ground water that may occur if remedial action is not initiated expeditiously; (5) weather conditions that may cause hazardous constituents to migrate or be released; (6) risks of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or failure of a container or handling system; and (7) other situations that may pose threats to human health and the environment.

One commenter stated that proposed § 258.58(a)(4) is too vague. The commenter stated that forcing a facility that is already performing corrective action to conduct interim measures may be a waste of time and money. The commenter also suggested that such interim measures should only be required where necessary to prevent an immediate threat or endangerment to human health or the environment.

The Agency disagrees that the provision authorizing interim measures is vague. The discussion in the proposed rule adequately addresses the purpose and nature of these interim measures. As noted in that discussion, such interim measures serve to mitigate actual threats and prevent potential threats from being realized while a long term, comprehensive response is being developed. Sections 258.58(a) (3) and (4) require any interim actions to be consistent, to the greatest extent practicable, with the objectives and performance of the remedy selected, and that several factors are specified that must be considered by the owner or operator in taking these measures. These both guide the owner or operator in formulating interim measures.

Interim measures may encompass a broad range of actions. For example, an owner or operator responsible for contamination of a drinking water well may make available an alternative supply of drinking water to protect human health. This replacement action could be temporary or permanent. Other interim measures can include well relocation and treating contaminated ground water at the point of use. For further guidance, the Agency refers readers to the guidance document entitled RCRA § 3008(h) Corrective Action Interim Measures (June 10, 1987; OSWER Directive 9902.4).

Although the Agency has changed the rule language regarding interim measures, this change is a result of the decision to provide for a self-implementing approach to today's final rule. Today's final rule requires owners and operators to undertake these measures, in lieu of States, but does not alter the standard for when such measures are required. Under today's final rule, interim measures are required when necessary to protect human health and the environment.

b. Alternative Remedies

In the preamble to the proposed rule, the Agency explained that circumstances may arise which could render the chosen remedy technically impracticable. Proposed § 258.58(b) provided factors that the State should consider in making this determination. These factors included: (1) The owner or operator's efforts to achieve compliance with the requirements; and (2) whether other currently available or new and innovative methods or techniques could practicably achieve compliance with the requirements for the remedy. The proposed rule allowed the State to require the owner or operator to implement alternate measures to control exposure of humans or the environment (proposed § 258.58(c)). States also were allowed to require the owner or operator to implement alternate measures for control of the sources of contamination, or for the removal or decontamination of equipment, units, devices, or structures required to implement the remedy. The Agency stated in the preamble to the

proposed rule that the ground-water protection standard would not be changed.

The Agency did not receive comments opposing this approach so it has been retained in today's final rule. Modifications have been made, however, to allow for self-implementation of the regulations. Specifically, § 258.58(b) of today's final rule allows an owner or operator to determine that compliance with requirements of § 258.57(b) are not being achieved through the selected remedy. This situation may arise, for example, when the unexpected occurrence of an area of unstable soils may make it impossible to construct the selected remedy. If such a situation arises, the owner or operator must implement other methods or techniques that could practicably achieve compliance with the requirements for the remedy.

If compliance with the remedy requirements of § 258.57(b) cannot be achieved by currently available methods, the owner or operator is required to implement other techniques or methods that can achieve compliance with the requirements. If currently available techniques cannot practically achieve compliance, § 258.58(c) requires the owner or operator to: (1) Obtain the certification of a qualified ground-water scientist or the Approval of the Director of an approved State; (2) implement alternate measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment; and (3) implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are technically practicable and consistent with the overall objective of the remedy. Prior to implementing alternate measures, the owner or operator is required to notify the State and place a report in the facility's operating record justifying the alternative measure.

c. Period of Compliance

The Agency proposed that the State specify in the remedy the requirements for achieving compliance with the ground-water protection standard (§ 258.57(h)). These requirements included: (1) The ground-water protection standard be achieved at all points within the plume of contamination that lie beyond the ground-water monitoring system; and (2) the time necessary for the owner or operator to demonstrate that concentrations of hazardous constituents have not exceeded the ground-water protection standard. In setting an appropriate length of time, the State was to consider: (1) The extent and concentration of releases; (2) behavior characteristics of the hazardous constituents in the ground water; (3) accuracy of monitoring or modeling techniques; and (4) characteristics of the ground water.

In the preamble to the proposed rule, the Agency requested comment on the appropriateness of a minimum period of compliance as is required by the subtitle C program for hazardous waste facilities (i.e., three years). Only one commenter supported setting a minimum three year period of compliance as is required under the Subtitle C program. The remaining commenters requested that the period of compliance remain site-specific.

Because of the need to provide for a self-implementing approach to today's final rule, the Agency believes it is necessary to set a minimum period of compliance. The Agency has chosen to set the minimum compliance period at three years. However, the Agency has decided to continue to allow approved States to establish an alternative compliance period based upon site-specific conditions. When establishing an alternative compliance period, an approved State must consider the following site-specific conditions under § 258.58(e): (1) The extent and the concentration of the release; (2) the behavior characteristics of the hazardous constituents in the ground water; (3) the accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variabilities that may affect the accuracy; and (4) the characteristics of the ground water.

In summary, § 258.58(e) of today's final rule requires that the ground-water protection standard be achieved for a period of three consecutive years at all points within the plume of contamination that lie beyond the ground-water monitoring system unless an alternative period of time is established by an approved State. Approved States may set an alternative period of compliance after taking site-specific conditions into consideration. In demonstrating compliance with the ground-water protection standard, the owner or operator is required to use the statistical procedures promulgated today in § 258.53.

d. Alternative Approach

In the proposal, the Agency outlined and requested comment on an alternative approach to the proposed corrective action program which would have established fewer specific federal requirements for cleanup. It involved the following steps: (1) Any concentration of hazardous constituents in the ground water above trigger levels would be reported to the State; (2) the nature and extent of the contamination would be investigated; and (3) all necessary actions to abate any immediate risks to human health and the environment would be taken. After the owner or operator submitted the results of the investigation, the State would assess, on a site-specific basis, the risks to human health and the environment posed by the ground-water contamination. Based on this assessment, the State would set site-specific requirements for clean up of the ground water (including clean up levels). Next, the owner or operator would be required to submit a plan for attaining the cleanup requirements to the State for approval. The owner or operator would then implement the approved plan. Modification to the plan would be allowed based on site-specific considerations.

Two commenters indicated that they support the alternative approach discussed above. One commenter asserted that this alternative approach would be equally protective and somewhat more cost-effective than the proposed approach. After consideration of this alternative approach, the Agency has rejected it for two reasons. First, EPA believes the proposed approach is more protective of human health and the environment than the alternative approach because it more clearly defines the clean up levels and factors to be considered in evaluating and selecting appropriate remedies. Second, because of the site-specific risk evaluations required by the alternative approach, the Agency believes that States could spend a substantial amount of time reviewing plans and risk assessments and setting site-specific clean up goals, which would result in significant expenditures of resources. Therefore, the Agency believes that today's final rule, which is self-implementing, is more cost-effective than the alternative approach outlined above. As a result, today's final rule does not incorporate the alternative approach.

Appendix G—Supplemental Information for Subpart F—Closure and Post-Closure Care

Because of the potential threats to human health and the environment posed by municipal solid waste landfills that are not adequately closed and maintained after closure, the Agency specified minimum standards for closure and post-closure care in the proposed criteria. The proposed criteria included

a closure performance standard, a cover design requirement, the requirement to prepare closure and post-closure plans, and closure and post-closure care certification requirements. Following closure of each unit, the proposed criteria would require owners or operators to conduct post-closure care comprised of two phases. All owners or operators were subject to a minimum of 30 years of post-closure care (Phase I); following the 30-year Phase I program, owners or operators were required to continue those post-closure care activities deemed necessary by the State. The duration of this second period was also to be determined by the State. Under the proposal, the States would be given the authority to specify certain closure and post-closure care requirements, such as deadlines and procedures for submitting and approving plans, and certification procedures.

The Agency received numerous comments on these proposed criteria. While commenters generally favored the Agency's proposed requirements for closure and post-closure plans and the proposed approach of deferring to the States for many of the procedural requirements (e.g., deadlines for submitting plans, procedures for reviewing and approving plans), the Agency received numerous comments on the closure performance standard, certification procedures, and the length of the post-closure care period. In response to these comments, today's final rule incorporates some revisions to the closure and post-closure care criteria which are discussed below. Consistent with other sections of today's rule, the final closure and post-closure care criteria are self-implementing (see section III of today's preamble for discussion of this issue). Finally, the final rule includes a number of other clarifying changes that do not significantly alter the intent of the proposed criteria. For example, the closure and post-closure care requirements proposed in subparts D and E have been consolidated and moved to subpart F of the final Criteria and have been renumbered accordingly.

1. Section 258.60(a) Closure Performance Standard

Proposed § 258.30(a) would provide for a two-part health-based closure performance standard applicable to all municipal solid waste landfill units, which was designed to ensure the long-term protection of human health and the environment. First, the proposal would require the owner or operator to close each unit of a municipal solid waste landfill (i.e., each discrete cell or trench) in a manner that minimized the need for further maintenance after operations cease. Second, the proposal specified that closure activities must minimize the formation and release of leachate and explosive gases to air, surface water and ground water after closure to the extent necessary to protect human health and the environment.

Owners or operators would be required to describe the methods and procedures necessary to close each unit in accordance with this performance standard in the closure plan. The proposal specified that the plan would be approved by the States. The Agency believed that this approach would allow States the flexibility to incorporate existing State closure regulations and to require more specific technical closure standards if they believed such standards were necessary.

The Agency received mixed comments on the proposed closure performance standard. Many commenters supported the flexibility in the proposed standard because it would allow States to account for site-specific conditions in incorporating standards on a case-by-case basis, and would allow owners or operators to select the most cost-effective closure alternative. Other commenters, however, expressed concern that the proposed closure performance standard was too vague to be enforceable and noted in particular the ambiguity of the phrases "minimize the formation and release of leachate and explosive gases" and "to the extent necessary to protect human health and the environment." Others noted that the vagueness of the standard would not ensure that all States would implement a program that affords an acceptable minimum level of protection. It was also suggested that the closure criteria should be self-implementing, using the subtitle C interim status program as a model.

The Agency agrees with commenters that the proposed closure performance standard was too vague to be easily implemented by owners and operators of MSWLFs or enforced by States, by EPA in States found to have inadequate programs, or through citizen suits, particularly since the final rule utilizes a self-implementing approach. Therefore, consistent with the approach in today's rule of providing for the self-implementation of the revised criteria, the Agency has decided to adopt a specific final cover design standard in lieu of a general closure performance standard. Also consistent with the approach taken under today's rule, the Agency is providing greater flexibility, in approved States, by allowing the use of an alternate cover design that is equally as protective as the design specified in today's rule and is approved by the Director of the approved State. This design standard is discussed in greater detail in the final cover section below.

2. Section 258.60 (a) and (b) Final Cover Design

a. Overview of Approach

In addition to the closure performance standard in § 258.30(a), the Agency proposed specific final cover requirements in § 258.40 (b) and (c). As proposed in § 258.40(b), new units and lateral expansions would be required to be designed with liners, leachate collection systems, and final covers, as necessary, to meet a State-specified ground-water carcinogenic risk level with an excess lifetime cancer risk level (due to continuous lifetime exposure) within the 1×10^{-4} to 1×10^{-7} range. Under this proposed approach for new units and lateral expansions, it was envisioned that liners, leachate collection systems, and final covers would work together as a system in meeting the State-specified risk level. The Agency proposed a separate final cover requirement for existing units in § 258.40(c) because EPA believed that the risk-based approach proposed for new units and lateral expansions was inappropriate for existing units for several reasons described in detail in the preamble to the proposed rule (see 53 FR 33351). Therefore, the proposal would have required existing units, to install a final cover system that prevented infiltration of liquids through the cover and into the waste.

The Agency received numerous comments on the proposed risk-based final cover standards for new units and lateral expansions. Most commenters opposed the proposed risk-based approach for final covers for many of the same reasons they opposed this approach for liners and leachate collection systems (see appendix E of today's preamble); these commenters recommended that the Agency promulgate a minimum design for the final cover. Some contended that the risk-based final cover requirement proposed for new units and lateral expansions does not establish a minimum standard and is subject to the inherent uncertainties of risk analysis and risk assessment models. Others argued that minimum standards are necessary to make the closure requirements enforceable, and that a risk range does not ensure consistent implementation among States and may result in some facilities posing higher

risks than others. Several commenters noted that the risk-based approach would be very expensive for owners or operators because of the data they would need to generate to demonstrate the adequacy of the final cover, and suggested specifying a minimum design standard to minimize the costs. Other commenters were concerned that the proposed final cover requirements could imply the need to install a Subtitle C type cover and argued that a final cover of five feet of clay would be too costly because of the added expense of trucking in additional clay. These commenters suggested that a cover with a minimum of two feet of clay would be adequate to protect human health and the environment. Commenters also argued that the cost of complying with the proposed risk-based standard would force unscheduled closure of MSWLFs.

Many commenters also opposed the final cover requirements specified for existing MSWLF units. These commenters noted that the final cover standard proposed in § 258.40 for existing units specified that the final cover must prevent the infiltration of liquid, which is a more stringent standard than the language in the proposed performance standard in § 258.30, which would require that closure minimize the formation and release of leachate. These commenters strongly recommended that the Agency require that the closure standards minimize the formation and release of leachate, contending that a prevention standard is overly stringent.

The Agency received a variety of suggestions for final cover designs. A few commenters recommended that the criteria should define a minimum infiltration rate for the final cover system, suggesting, for example, a final cover permeability which is equal to or less than the bottom liner specification in order to prevent a "bathtub effect." These commenters also suggested that, in cases where the existing unit does not have a liner, the final cover system should have either a minimum standard of six inches of clay with a permeability level of 1×10^{-8} cm/sec, or a comparable puncture resistant flexible membrane liner having the same standards as those established for bottom liner systems. Other commenters suggested a variety of other cover designs including the design described in the subtitle C guidance manual entitled "Technical Guidance Document: Final Covers on Hazardous Waste Landfills and Surface Impoundments," July 1989, EPA/530–SW–89–047. The final cover design described in this document requires that final covers meet a number of performance criteria including a permeability no greater than the bottom liner, and other types of composite cover designs (e.g., synthetic liners with clay and gas venting layers). Another commenter recommended that the Agency use the design in the subtitle C guidance as a model in developing cover requirements and allow variances to the uniform design only to owners or operators who can demonstrate that less stringent closure standards will adequately protect human health and the environment.

The Agency agrees with commenters who recommended that some minimum final cover design standard is necessary to ensure that a baseline, acceptable final cover is installed at all MSWLF units and to ensure enforceability of the requirements. In addition, as discussed in appendix D of today's preamble, EPA agrees that the proposed risk-based approach for facility design and closure would present significant implementation difficulties for owners or operators. Therefore, in response to these comments and consistent with the provision of self-implementing standards throughout today's rule, the Agency has replaced the proposed approaches for new units, lateral expansions, and existing units with a single final cover requirement applicable to all MSWLF units, including new MSWLF units, lateral expansions, and existing MSWLF units. This requirement is set forth in § 258.60(a) which specifies that all MSWLF units must have a final cover designed to minimize infiltration and erosion. Section 258.60(a) further specifies clear minimal design criteria for the infiltration and erosion layers, while § 258.60(b) specifies that the Director of an approved State may approve alternative final cover systems that meet certain criteria. Each of these elements of today's standard is discussed in more detail below.

The Agency selected this approach to the final cover requirement for several reasons. First, the Agency believes that the specific infiltration and erosion layer requirements (discussed below) are the minimum necessary to be protective of human health and the environment. Second, today's approach is generally consistent with State programs, thus minimizing disruption of or inconsistencies with existing State programs, while providing protection of human health and the environment.

Furthermore, EPA believes today's final approach effectively addresses many of the concerns expressed by commenters. Specifically, today's approach provides a clear, enforceable standard that will ensure baseline protection to all MSWLF units. These clear standards also will reduce the resources needed by owners and operators and States in implementing the final cover requirements. In addition, today's approach incorporates flexibility by allowing the Director of an approved State to approve alternative final covers.

b. Rationale for Specific Elements of Final Cover Standard

As indicated above, today's final cover requirements include two elements: Infiltration layer and erosion layer criteria. § 258.60(a)(1) requires that the infiltration layer be comprised of a minimum of 18 inches of earthen material that has a permeability less than or equal to the bottom liner or natural subsoils. The Agency included this permeability standard to prevent the "bathtub effect," mentioned by commenters, which would greatly increase the potential for the formation and migration of leachate. The Agency also shared the concerns expressed by commenters that this permeability standard linked to the bottom liner's permeability would allow owners or operators of existing MSWLF units with poor or nonexistent liner systems to install very permeable final covers. Therefore, the Agency also has included in today's rule the additional requirement that the cover have a permeability no greater than 1×10^{-5} cm/sec regardless of the permeability of the bottom liner.

The second element of today's final cover requirement is an erosion layer that must consist of a minimum of six inches of earthen material that is capable of sustaining native plant growth. Prevention of erosion is necessary to prevent degradation of the cover that would ultimately increase infiltration and formation of leachate. In selecting the components of the infiltration layer (i.e., 18 inches of earthen material with permeability no greater than 1×10^{-5} cm/sec) and the erosion layer (i.e., six inches of earthen material capable of sustaining native plant growth), EPA considered final cover designs suggested by commenters as well as current State standards and experiences. As mentioned earlier, while some commenters suggested final cover designs similar to those recommended for subtitle C facilities, others argued that a two foot final cover would be protective for MSWLFs. In addition, over 40 States require at least two feet of final cover material for MSWLFs and many specifically require infiltration and erosion layers. Finally, while the final cover permeability

standards vary by State, some States require a permeability of less than 1×10^{-5} cm/sec.

After review of commenters' suggestions and current State approaches, EPA concluded that today's minimum infiltration and erosion layer requirements will be protective of human health and the environment, while at the same time be within the practicable capability of owners and operators of MSWLFs. EPA found that more stringent final covers, such as those recommended for subtitle C facilities, would be substantially more costly than today's final requirements. These higher costs would likely contribute significantly to making today's rule beyond the practicable capability of MSWLF owners or operators (see Regulatory Impact Analysis results in section III.B of today's preamble).

Finally, § 258.60(b) of today's rule allows the Director of an approved State to approve alternative final covers that include infiltration and erosion layers that achieve equivalent performance as the minimum designs specified in § 258.60(a). The Agency included this provision to provide an opportunity to incorporate technology improvements and to address site-specific conditions. Because the Agency believes these alternative designs must be reviewed and approved by an approved State, the opportunity for alternative designs will not be available for owners and operators of MSWLFs in States without EPA-approved permitting programs.

3. Sections 258.60(c) and 258.61(c) Closure and Post-Closure Care Plans

a. General Contents of Plans

Sections 258.30(b) and 258.31(c) of the proposal would require all owners and operators of municipal solid waste landfills to prepare written closure and post-closure plans describing how the facility would be closed in accordance with the closure performance standard, and maintained after closure. The Director of an approved State may specify alternative recordkeeping locations and alternative schedules for recordkeeping and notification requirements for these plans or any anlytical data from closure and post-closure. The closure and post-closure plans would describe the activities required to meet the closure performance standard and the post-closure care requirements, and would provide a basis for establishing site-specific cost estimates used to determine the amount of financial assurance required.

The Agency specified in § 258.30(b)(1)–(5) the minimum information that must be included in a closure plan. This information included: a description of the methods, procedures, and processes necessary to close the landfill in accordance with the closure performance standard, including decontamination procedures; an estimate of the maximum extent of operation that would be open during the active life of the landfill; an estimate of the maximum inventory of wastes ever on-site over the landfill's life; a description of the final cover in accordance with the design criteria proposed in § 258.40; and a schedule for completing all of these activities.

As proposed, the post-closure plan would have to describe the monitoring and maintenance activities to be conducted during the two-phase post-closure care period, as well as the frequency with which these activities would be performed. Maintenance activities consist mainly of routine maintenance such as mowing, fertilization, and erosion and rodent control. EPA also proposed that the post-closure plan include the name, address, and telephone number of the person or office to contact about the landfill during both phases of post-closure care, and a description of the planned uses of the property after closure.

Comments on the types of information and level of detail in the plans were varied. Some commenters argued for more specificity in the closure plan requirements, including submission of detailed engineering plans. Commenters also suggested that plans be prepared by a professional engineer, and that a certified operator be responsible for the site. In contrast, other commenters contended that the proposed rule's requirements were too detailed and extensive and that EPA should allow for more flexibility in the content of the plans in order to account for site-specific considerations. Others suggested that decisions on the level of detail in the plans be left to the States.

Upon consideration of these comments, the Agency is finalizing the requirements applicable to the contents of closure and post-closure care plans in §§ 258.60(c) and 258.61(c) as proposed, with two changes discussed below in Section c on decontamination and section d on estimates of maximum extent of operation and maximum inventory. The Agency continues to believe that the level of detail required in the plans represents the minimum level necessary to ensure adequate planning by the owner or operator, to provide criteria for evaluating the adequacy of these plans, and to ensure the enforceability of closure requirements by citizen suits. The Agency disagrees that the proposed requirements would restrict the flexibility of owners or operators in preparing the plans or limit a State's discretion in evaluating the adequacy of these plans. The requirements would require an owner or operator to provide extensive detail about the types of activities that will be undertaken to meet the closure and post-closure criteria; however, most of the specific activities are left up to the owner or operator, thus allowing him to incorporate site-specific conditions. Similarly, States with approved programs will have sufficient flexibility in evaluating the adequacy of these plans.

The Agency recognizes the concerns of commenters about the need for specificity in the closure and post-closure plans, particularly since these requirements will be self-implementing. The closure and post-closure plans are critical documents for ensuring that owners or operators of municipal solid waste landfills have adequately planned for the necessary activities to ensure that all units are closed in a manner that provides adequate protection of human health and the environment. Also, closure and post-closure care plans provide the basis for cost estimates that in turn establish the amount of financial responsibility that must be demonstrated. Adequate plans therefore help to ensure that owners and operators demonstrate adequate financial responsibility.

The Agency does not agree with commenters who felt that closure plans should be certified by a professional engineer. EPA believes it will be relatively easy to verify that the plan meets the requirements because the closure performance standard has been replaced in today's rule with a final cover design standard in § 258.60(a) providing very specific directions to the owner or operator. Any variations from the final cover standards in § 258.60(a) must be approved by the Director of an approved State. Therefore, EPA believes an additional requirement that the plan be certified would place an unnecessary burden on owners and operators.

The Agency does not agree with commenters who suggested that facility operators should be required to be certified. The Agency believes that the provisions in today's rule, which include a specific closure design standard, are sufficient to ensure that landfills are closed and maintained after closure in a

manner that will protect human health and the environment, thus making any additional certification requirements unnecessary. In addition, the Agency did not receive suggestions about the kinds of additional certifications that would be appropriate for operators of municipal solid waste landfills. The absence of a certification requirement for facility operators in the final rule, however, does not preclude a State from supplementing the federal criteria with additional closure and post-closure plan requirements as deemed necessary.

b. Location of Closure and Post-Closure Plans

The proposed rule specified in §§ 258.30(c) and 258.31(d) that the closure and post-closure plans must be kept at the facility or at an alternate location designated by the owner or operator. To be consistent with other recordkeeping provisions of the final rule, §§ 258.60(d) and 258.61(d) of the final rule require the closure and post-closure plans to be included in the facility operating record.

c. Decontamination of the Facility

The proposal would require that closure plans include a description of procedures for decontaminating the landfill (§ 258.30(b)(1)). The proposal did not specify the scope of this requirement or particular activities to be undertaken. Many commenters noted that the requirement was ambiguous and requested that it be clarified. For example, one commenter noted that he assumed that decontamination applied to the equipment, structures, and soils contaminated by lubricants or other similar materials. A number of commenters were uncertain about the differences between decontamination activities and corrective action and noted that they could be inconsistent. For example, one commenter contended that planning for decontamination was not practical because such plans would need to be based on the nature of the contamination, which would not be known until the contamination occurred. Other commenters were concerned that the requirement implied that the wastes from the landfill must be removed at closure and that such measures were appropriate only if the landfill posed an imminent public endangerment and no other options were available. Finally, some commenters contended that the requirement was confusing and recommended that it be deleted altogether.

The Agency recognizes that the requirement that the closure plan describe decontamination activities has caused confusion among commenters and that the ambiguity of the requirement may result in a misunderstanding of the Agency's intent. The Agency's real concern in proposing this requirement was to ensure that hazardous waste at the site would be managed adequately. Upon reconsideration, the Agency determined that the concerns regarding the receipt or management of any hazardous waste are adequately addressed in the facility operating standards (see § 258.20) and need not be included in the closure criteria. Therefore, the final rule does not require that a description of decontamination activities be included in the closure plan.

d. Estimates of Maximum Extent of Operation and Maximum Inventory

The proposal would provide that the closure plan include an estimate of the maximum extent of operation that will be open at any time during the active life of the landfill and the maximum inventory of wastes ever on site over the active life of the landfill (§ 258.30(b) (2) and (3)). Several commenters expressed confusion concerning the definition of maximum extent of operation and maximum inventory and questioned whether the proposed requirements were necessary. For example, some commenters were concerned that the maximum extent of operation was equivalent to the maximum design capacity of the entire landfill and as a result would not account for partial closures undertaken over the life of the facility. One commenter recommended requiring the plan to address the areal extent of the facility requiring final grading rather than estimates of the "maximum extent of operation" and maximum inventory.

In the preamble to the proposed criteria, the Agency explained that the estimates of the maximum extent of operation and maximum inventory ever on site over the active life of the facility are important because they are used to estimate the cost of closure and the level of financial assurance that is required. The amount of financial assurance must account for the maximum costs of closure to ensure that adequate funds are available even if closure takes place earlier than expected.

The preamble further noted that the estimate of the maximum extent of operation of the landfill must account for the largest portion of the landfill ever open at any one time over the active life of the landfill. For example, if an owner or operator routinely capped portions of the landfill as they reached capacity and never had more than one acre open at any time, then the estimate of the maximum extent of operation would be one acre. Under the proposal, an area was considered open if it was subject to the regulations and had not been closed in accordance with the closure requirements (i.e., had not been closed with a final cover that met the technical design standards).

Likewise, the estimate of maximum inventory referred to the largest amount of waste ever on site at one time that would need to be handled if closure were to occur at any time during the active life of a municipal solid waste landfill. This estimate would include any wastes stored temporarily on site (i.e., not yet disposed) and run-off from trenches or ditches associated with the landfill. The Agency expects that at most facilities, minimal inventory will be accumulated on site.

The Agency continues to believe that estimates of the maximum area of the landfill ever requiring a final cover at one time and of the maximum inventory must be included in the closure plans to ensure that owners or operators have adequately prepared for closure, including closure that might occur unexpectedly at any time. In addition, these estimates will serve as the basis for determining the amount of financial responsibility needed in order to ensure that owners and operators have adequate funds to cover the most expensive cost of closure (i.e., when the largest area of the landfill is open). Because of the confusion over the definition of "maximum extent of operation," however, the Agency is clarifying the language in the final rule by replacing the estimate of the "maximum extent of operation" with an estimate of the largest area of the MSWLF that will ever require a final cover over the active life of the facility. If an owner or operator routinely closes landfill cells as they are filled, then the plan should indicate the greatest number of cells ever open at one time. The Agency is finalizing as proposed the requirement to include an estimate of the maximum inventory ever on site in the closure plan.

The Agency wishes to reiterate that the estimate of the maximum area of the MSWLF requiring a final cover must account for all areas of the MSWLF subject to these regulations and not already closed in accordance with the § 258.60 closure requirements. Therefore, portions of the landfill that have daily cover, but not a final cover that satisfies the cover design standard, must be included in the estimate. Similarly, the estimate of the maximum inventory must account for the maximum amount of wastes on site (and not yet disposed) that may need to be

removed or disposed in the landfill over the life of the site, including any wastes that may be stored prior to being disposed on or off site. The Agency, however, does not intend the estimate of maximum inventory to represent the design capacity of the landfill.

e. Post-Closure Use of Landfill Property

The proposed rule would require that the post-closure plan include a description of planned future uses of the site. Section 258.31(c)(3) proposed that the post-closure use of the property could not disturb the integrity of the final cover unless the State approved the owner's or operator's demonstration that the activities (1) would not increase the potential threat to human health and the environment or (2) were necessary to reduce a threat to human health or the environment (e.g., disturbance of the final cover as part of corrective action). In the preamble, the Agency noted that a recreational park might be an acceptable use of property if the above criteria were satisfied.

The Agency received several comments regarding the use of landfill sites during the post-closure care period. One commenter supported the future use of closed sites as long as the integrity of the final cap and liner was maintained and proper monitoring continued. A few commenters opposed the subsequent use of property, noting that post-closure recreational use (e.g., use of off-road vehicles) could disturb the final cover, expose the public to toxic materials, and promote leachate generation, thereby providing inadequate protection of human health and the environment. One commenter suggested that sites not be used for at least five years and that an evaluation of the site by an independent geotechnical engineer affirming that subsidence had not occurred be required prior to any subsequent use.

Upon consideration of the comments, the Agency is finalizing the proposal substantially as proposed with changes to allow for self-implementation and to clarify the intent of the regulatory language. To ensure that corrective action measures could not be construed as inconsistent with the post-closure use of property restrictions, the proposed rule included a provision that a closed unit could be disturbed if necessary to reduce a threat to human health and the environment. To clarify this intent, the final rule replaces this language with the provision in § 258.61(c)(3) that states the owner or operator may not disturb the integrity of the final cover unless it is necessary to comply with other requirements in part 258. This clarifies that an owner or operator in an unapproved State is not precluded from initiating corrective action if needed.

While the Agency continues to believe that under very limited circumstances it may be possible or desirable to allow certain post-closure uses of land, including some recreational uses, without posing a significant threat to human health and the environment, such situations are likely to be very limited and need to be considered carefully. To ensure that activities other than those necessary to comply with part 258 are not undertaken without prior approval, the opportunity to request permission for future use of a closed MSWLF for such activities is available only to facilities located in approved States. In an approved State, the Director may approve a request from an owner or operator to disturb the final cover, liner or other component of the containment system, including removing wastes, only if the owner or operator demonstrates that such activities will not increase the potential threat to human health or the environment.

4. Sections 258.60(d) and 258.61(d) Closure and Post-Closure Plan Deadlines and Approvals

The proposed requirements for closure and post-closure plan deadlines and approvals in §§ 258.30(c) and 258.31(d) would establish the general requirement that owners or operators must prepare closure and post-closure care plans by the effective date of the regulation or upon the initial receipt of solid waste, whichever is later. The proposal would defer to the States for establishing deadlines for submitting the plans to the States. The proposal also specified that plans and any subsequent modifications to the approved plans would be approved by the States.

The Agency received a number of comments regarding the rule's deadlines for preparing closure and post-closure plans and the requirements for States to approve these plans. Most of the commenters expressed confusion about the deadlines for preparing and submitting plans. In particular, commenters questioned whether plans must be prepared or submitted by the effective date of the regulation, at some later time, or by State-specific deadlines. Some commenters noted the possibility of inconsistencies and conflicts between the proposed deadlines and State deadlines. Other commenters expressed concern that the deadline for completing plans by the effective date of the rule would not allow adequate time for many owners or operators, especially of existing facilities and those serving smaller communities, to prepare adequate plans.

Several commenters contended that without a deadline for the submittal of plans, it would be difficult to enforce compliance and ensure the development of adequate plans. One commenter suggested that States should establish schedules for submitting plans but that they should be required no later than three years after the effective date for existing facilities.

Several States expressed concern that the proposal would require them to review and approve or disapprove all plans by the effective date of the rule, which would pose an undue administrative burden on limited resources. Finally, some commenters expressed concern that the proposal did not contain specific provisions for public participation during the plan approval process.

Based on its experience in the subtitle C program, the Agency does not believe that owners or operators will face an unreasonable burden in developing plans by the effective date of the rule. In implementing similar closure and post-closure plan requirements under subtitle C, the Agency did not encounter problems for owners or operators of hazardous waste facilities who were required to prepare plans within 12 months from the promulgation date of the rule (i.e., twelve months less time than the deadlines applicable to owners or operators of municipal solid waste landfills). As noted in the preamble to the proposed criteria, much of the information required to prepare a closure and post-closure plan should be readily available to the owner or operator based on routine operating practices.

The Agency also continues to believe that procedural requirements, such as deadlines for submitting plans to the States, should be left to the States to allow them the flexibility to establish their own priorities, particularly because many States already have solid waste management programs with such procedural requirements in place.

The Agency does not agree with those commenters who asserted that without deadlines for submitting closure and post-closure plans, adequate plans may not be prepared. The Agency believes that the final rule includes a sufficient amount of specificity to allow owners or operators to prepare adequate plans.

Because of the above reasons, the Agency is finalizing the rule substantially as proposed with some changes in order to allow for self-implementation of the rule. The final rule continues to require that owners and operators prepare their closure and post-closure plans by the effective date

of the regulations or the initial receipt of waste, whichever is later. Consistent with the other recordkeeping requirements in the final rule, the owner or operator must notify the State Director that the plans have been prepared and placed in the operating record of the facility. To allow for self-implementation, the rule no longer includes the requirement that States must approve the plans.

5. Section 258.60 (f) and (g) Deadlines for Closure

a. Deadline for Beginning Closure

The Agency proposed in § 258.30(d) that owners and operators would begin closure of each landfill unit in accordance with an approved closure plan no later than 30 days after the final receipt of wastes at that unit. The proposal did not define the "final receipt of wastes"; however, in the preamble accompanying the proposed rule, the Agency encouraged States to define the final receipt of waste to preclude landfills from remaining inactive for an indefinite period of time by claiming they had not received the final shipment of waste. The Agency suggested that States adopt a standard requiring sites to begin closure within 30 days of the final receipt of waste, or no later than one year after the most recent receipt of waste if landfill capacity was available. The proposed rule would give States the discretion to grant extensions to the deadline for beginning closure, provided that the landfill unit would not pose a threat to human health or the environment.

The Agency received numerous comments on this proposed requirement. While some commenters favored the 30-day deadline, most commenters argued that the 30-day deadline for beginning closure would not be feasible or desirable under a number of circumstances, such as adverse weather conditions or unavoidable contract delays. These commenters suggested 90 days or 180 days from the date of the final receipt of waste, with allowances for extensions, contending that these longer timeframes would reduce the number of requests for extensions and pose no unreasonable risk to human health and the environment. Finally, some commenters recommended that the Agency not specify a deadline in the regulation but delegate to the States the responsibility of establishing closure schedules.

The Agency received a number of comments supporting the inclusion of extensions to the 30-day deadline to account for circumstances such as seasonal conditions that preclude initiating earthmoving activities, or landfills that have remaining capacity but are experiencing business fluctuations. Commenters also noted the need for specific criteria for granting extensions to the deadline to begin closure. Most stated that detailed criteria for granting extensions were necessary to ensure adequate protection of human health and the environment. Suggestions included specifying a time limit for which extensions may be granted to ensure that sites were closed in a timely manner, and allowing the appropriate authority to grant extensions to the deadline for beginning closure only if the owner or operator demonstrates that the unit or facility has remaining capacity, and that the owner or operator is operating, and will continue to operate, the facility in a manner that ensures the protection of human health and the environment, including complying with all applicable regulations.

In response to public comments and to make the requirements self-implementing, the final rule in § 258.60(f) requires an owner or operator to begin closure within 30 days after the final receipt of waste, or no later than one year from the most recent receipt of waste under certain circumstances. Extensions beyond the one-year deadline are available only in approved States if certain criteria are met.

The Agency continues to believe it is important to establish deadlines for triggering closure of landfills to avoid potential threats to human health and the environment posed by inactive but unclosed landfills, particularly for facilities located in unapproved States. The Agency believes that in most cases, 30 days from the final receipt of waste will provide sufficient time to begin closure activities. The Agency wishes to reiterate that the 30-day deadline refers to the beginning of closure activities and does not require that closure be completed within 30 days, or that procedures for installing the final cap necessarily begin within this 30-day deadline. Since all owners or operators will be required to have prepared closure and post-closure plans by the effective date of the regulations, the owner or operator should be prepared to begin closure procedures of each unit within the specified time frame. As discussed below, the final rule allows owners or operators, in limited circumstances, to delay closure up to one year after the most recent receipt of waste, which should minimize any burdens on owners or operators.

The Agency agrees with commenters who argued that it may be desirable to allow a unit or facility to delay closure if the landfill unit has remaining capacity. Therefore, the final rule allows an owner or operator of a landfill to delay closure up to one year from the most recent receipt of waste if the landfill unit has remaining capacity and there is a reasonable likelihood that the unit will receive additional wastes. In addition, the Director of an approved State may grant extensions beyond this one-year deadline for beginning closure under certain circumstances.

The Agency also agrees with commenters that criteria for granting extensions to the closure deadlines are important for ensuring that units or facilities do not unnecessarily delay closure if such delays would pose threats to human health and the environment. Therefore, the final rule adds criteria to § 258.60(f) and allows the Director of an approved State to grant an extension to the maximum one-year deadline to begin closure if the owner or operator demonstrates that the unit has the capacity to receive additional wastes, and he has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed landfill.

The Agency also received comments requesting clarification of the term "final receipt of wastes." The proposal stated that closure must begin within 30 days of the "final receipt of waste." Most commenters suggested that the Agency define "final receipt of wastes," arguing that the lack of a uniform definition would threaten the protection of human health and the environment by allowing sites to remain inactive for an indefinite amount of time. Suggestions included defining "final receipt of waste" as the last expected receipt of waste to account for extended periods of inactivity in rural areas and infrequently used landfills, and linking the trigger for beginning closure to design capacity to avoid forcing a landfill to close if it still has capacity and intends to receive additional wastes. Commenters argued this approach would prevent owners or operators from receiving periodic shipments of wastes solely to avoid closure even though the unit had reached its design capacity.

The Agency agrees that it is necessary to include a more explicit definition of "final receipt of waste" to ensure that closure is not deferred indefinitely. The Agency also recognizes that in some cases, a landfill may receive wastes relatively infrequently (as may be the case with small, rural landfills) but have remaining capacity. Therefore, § 258.60(f) of the final rule requires that owners or operators begin closure of

each unit within 30 days after the known final receipt of wastes or, if the landfill has remaining capacity and there is a reasonable likelihood that the landfill will receive additional wastes after the 30-day period, no later than one year after the date on which the unit received the most recent volume of wastes. This definition will ensure that units are closed when they are unlikely to receive any additional wastes or have no remaining capacity and, at the same time, will provide sufficient flexibility to account for routine business cycles and other business disruptions.

b. Deadlines for Completing Closure

While the proposal did not specify deadlines for completing closure, the Agency recommended in the preamble accompanying the proposed rule that States develop specific deadlines and milestones for completing closure activities. The Agency also requested comments on whether the federal criteria should include a deadline for the completion of closure.

A number of commenters supported the proposal to leave deadlines for completing closure up to the States, thus allowing the States flexibility to account for the unique situations of sites within each State (e.g., weather conditions, availability of contractors). The majority of commenters, however, recommended that a specific deadline be set for completion of closure to ensure that closure is not unnecessarily delayed. Commenters suggested a number of different deadlines: Some commenters suggested the Subtitle C requirements of 180 days with an option for extensions, and others recommended time periods of one year to one and one half years. One commenter suggested that the Subtitle C interim milestone of 90 days for managing all inventory also be incorporated into the rule's closure deadlines.

Particularly because the final rule utilizes a self-implementing approach, the Agency agrees with the commenters' concerns that including a deadline for completing closure is necessary to ensure that the completion of closure is not delayed indefinitely. Therefore, the Agency is adding § 258.60(g) to the final rule to require that closure of each unit must be completed within 180 days of the beginning of closure activities. The Agency recognizes that in limited circumstances climatic conditions and other factors may make it difficult to complete closure within 180 days. Therefore, the final rule also allows the Director of approved States to grant extensions to the 180-day deadline if the owner or operator demonstrates that closure cannot be completed within 180 days, and he has taken all steps necessary to ensure that delaying the completion of closure will not pose a threat to human health and the environment. This 180-day deadline and the option for the Director of an approved State to grant an extension under limited circumstances are consistent with the deadlines under subtitle C in 40 CFR 264.113 and 265.113. This approach is also consistent with comments submitted by a number of parties as noted above.

The Agency does not believe that it is necessary to incorporate a 90-day interim deadline for removal of inventory into the closure deadlines. The Agency does not anticipate that municipal solid waste landfills are likely to accumulate large quantities of inventory that could pose a serious threat to human health and the environment if they were not managed quickly. Furthermore, the Agency does not want to restrict State flexibility unless it is necessary to protect human health and the environment. States may wish to incorporate interim milestones in their programs to take account of site-specific or State-specific conditions (e.g., interim deadlines for installing final covers if deemed appropriate to account for special climatic conditions).

6. Section 258.60(e) Closure Notification Requirement

The proposal did not include a requirement that owners and operators notify the States of the commencement of closure. The Agency instead recommended that States develop their own closure notification requirements to allow time for facility inspections to ensure that the approved closure plan was still applicable. (The proposal would require that all closures be in accordance with an approved closure plan but would leave to the States the responsibility of establishing review procedures.)

Several commenters disagreed with the Agency's position that closure notification requirements should be deferred to the States, arguing that specific notification requirements are necessary to allow States the time to inspect facilities and ensure that the approved closure plan was applicable. In addition, commenters noted that advance notification would help to avoid inactive but unclosed sites. Commenters suggested that the Agency incorporate the requirements of Subtitle C and require notification at least 60 days prior to closure. Commenters also recommended including provisions for public participation as part of the notification requirements.

Upon consideration of the comments, the Agency decided to add a notification requirement to the final rule in § 258.60(e). The final rule requires all owners or operators (in both approved and unapproved States) to notify the State in which the facility is located prior to beginning closure of each unit, and place a notice of impending closure in the facility operating record. The Agency believes that notifying the State of closure is important to provide States and citizens an opportunity to ensure that the activities described in the closure plan are appropriate to close the unit under current conditions. This is particularly important for today's self-implementing rule because there are no requirements to approve the closure and post-closure plans prior to closure.

7. Section 258.61(a) and (b) Length of Post-Closure Care Period

The Agency proposed under § 258.31(a) that owners and operators of MSWLFs must conduct two phases of post-closure care. During the first 30 years of the post-closure care period (Phase I), the proposal would require the owner or operator to conduct routine maintenance of the final cover, conduct ground-water monitoring, continue leachate collection and gas monitoring requirements if subject to these requirements during the facility's operating life, and maintain the integrity of these monitoring systems. Leachate collection systems would be required to be operated until leachate was no longer generated.

Following completion of the first phase of post-closure care at each landfill unit, the proposed rule would require in § 258.31(b) that owners and operators of MSWLFs conduct a second, less-intensive phase of care that included, at a minimum, groundwater monitoring and gas monitoring in order to detect any contamination that might occur beyond the first 30 years of postclosure care. The proposal would leave to the States the responsibility for specifying the duration and the specific activities to be conducted during this second phase.

In the preamble to the proposed rule, the Agency requested comments on the two-phased approach, information on the frequency and timing of releases from landfills, suggestions for criteria that could be used to evaluate the length of the post-closure care periods, appropriate demonstrations for terminating the post-closure care period, and other pertinent information based on experiences with closed landfills.

Commenters were nearly unanimously opposed to the proposed length of the

post-closure care period and suggested a variety of alternatives. Several commenters argued that the minimum 30-year Phase I post-closure care period was unnecessarily long, contending that a landfill reaches equilibrium in as few as ten or fifteen years after which significant quantities of leachate and methane gas are no longer generated. Others recommended a mandatory period of five, ten or twenty years with the option to extend the time frame only if the State determined it to be necessary. Finally, some recommended granting the States more flexibility in determining the length of post-closure care period.

Several commenters specifically opposed a mandatory second phase of post-closure care asserting that additional post-closure care beyond 30 years should only be required on a case-by-case basis if a problem exists. Other commenters noted that the proposal was more stringent than subtitle C requirements, and recommended that the final rule be consistent with subtitle C and delete the second mandatory phase and allow States the discretion to reduce or extend the 30-year Phase I requirements. Granting States the discretion to increase the length of the period if necessary to protect human health and the environment on a case-by-case basis eliminates the need for a mandatory Phase II period. Many commenters also noted the economic burden of a potentially infinite Phase II post-closure care period.

In contrast, some commenters asserted that a 30-year Phase I post-closure care period was not long enough and urged the Agency to lengthen the Phase I period because leachate and gas formation may continue beyond the first 30 years after closure and releases may occur when liners and leachate collection systems fail. One commenter contended that perpetual care would likely be required. Other commenters argued that unless owners or operators continued to maintain the cover and prevent the infiltration of liquids into the landfill after the initial 30-year period, significant amounts of water would be introduced into the landfill, leachate and methane gas would be generated, and releases would likely to occur. Finally, commenters suggested that the Agency establish criteria for determining when reductions in long-term postclosure care are warranted to avoid inconsistent implementation of the requirements and to ensure that reductions are allowed only when there is no significant threat to human health and the environment.

After carefully considering the public comments received, the Agency decided to drop the two-phased approach to post-closure care, and is requiring in § 258.61(a)(1)–(4) that owners or operators conduct post-closure care activities for a period of 30 years after the closure of each MSWLF unit. Section 258.61(b) allows the Director of an approved State to extend or reduce the 30-year period based on cause. Reductions in the length of the period will only be permitted if the owner or operator demonstrates that a shorter period is sufficient to protect human health and the environment. Increases in the post-closure care period may be made if the Director of an approved State determines that the lengthened period is necessary to protect human health and the environment.

Although commenters suggested various alternative post-closure care periods, the Agency does not have data to enable it to evaluate the alternatives suggested. While one commenter submitted some data suggesting that equilibrium would generally occur ten to fifteen years after closure, this assessment was made based only on gas generation rates. No leachate data were submitted. The Agency did not receive empirical evidence demonstrating that discontinuing post-closure care after the stabilization of an MSWLF would be adequately protective of human health and the environment. The Agency also did not receive any data supporting any of the other recommended time periods, including the need for longer time periods. Therefore, the Agency does not have data at this time to support a requirement that is either more or less stringent than subtitle C requirements.

The Agency is allowing this 30-year period to be decreased or increased by the Director of an approved State to account for situations where a 30-year post-closure care period may be inappropriate based on site-specific conditions. Providing for variances in the post-closure care period in approved States allows the flexibility to accommodate differences in geology, climate, topography, resources, demographics, etc. In all cases, however, the Agency is convinced that these decisions must be reviewed carefully and be subject to State review to ensure that units are monitored and maintained for as long as is necessary to protect human health and the environment.

8. Section 258.61(a) Post-Closure Care Activities

The Agency received varied comments on the types of activities that should be undertaken during the post-closure care period. A number of commenters supported the requirements as proposed. In contrast, some commenters asserted that the requirements should be made less stringent, arguing that municipal solid waste landfills do not pose the same risk as hazardous waste landfills (e.g., MSWLFs located in rural areas). Others contended that the very large costs associated with 30 years of ground-water monitoring would be burdensome to owners or operators. Several commenters contended that the proposed post-closure criteria did not provide sufficient guidance to the States and recommended that more specific post-closure care requirements be promulgated in order to adequately protect public health.

The Agency received extensive comments on the proposed post-closure care leachate collection requirements. Several commenters objected to the requirement that owners or operators of landfills maintain and operate the leachate collection system until leachate is no longer generated, claiming that leachate may be generated in perpetuity, especially under certain climatic conditions. One commenter stated that the proposed definition of leachate as "liquid passing through or emerging from solid waste that constrains soluble, suspended or miscible material" ensures that leachate will need to be collected in perpetuity even though it may pose limited threats. Others contended that it may be environmentally acceptable to stop pumping leachate if the contaminant concentrations reach environmentally acceptable levels as determined by the State.

After consideration of the commenters' concerns, the Agency decided to finalize the proposed post-closure care activities in § 258.61(a) with one change to the leachate collection requirements as discussed below. The Agency believes that requiring owners or operators at a minimum to maintain the cover and containment systems and to continue ground-water monitoring, gas monitoring, and leachate collection is consistent with the Agency's dual goals of preventing releases of constituents and detecting releases that occur as quickly as possible.

The Agency does not believe that more specific post-closure care requirements are necessary. Many of the post-closure care activities are extensions of activities conducted during the operating life of the facility and should not require extensive facility-specific analyses. Furthermore, the final rule does not prescribe the precise activities that must be undertaken to achieve these objectives; thus, the rule provides sufficient flexibility to account for those facilities

that pose low risks to human health and the environment.

The Agency reconsidered the proposed leachate collection requirements and acknowledges that at some landfills, leachate concentrations may eventually become low enough to pose no threat to human health and the environment. However, because of the potential threats posed by leachate, the Agency believes that the decision to stop managing leachate must be reviewed and approved by the State. Therefore, the final rule in § 258.61(a)(2) requires that owners or operators continue to collect and manage leachate in accordance with the requirements of § 258.40 for 30 years consistent with all other post-closure care requirements. In an approved State, the Director may allow an owner or operator to cease managing leachate if the owner or operator demonstrates that the leachate no longer poses a threat to human health and the environment.

A few commenters argued that post-closure care activities were overly burdensome for small landfills and that such facilities should be exempt from the revised criteria. While the Agency recognizes the wide diversity in site conditions and encourages States to be flexible in evaluating post-closure care requirements on a case-by-case basis, the Agency is unwilling to grant less stringent requirements or exemptions to small landfills that otherwise do not meet the criteria for exemptions to today's rule as discussed in Section IV.A of the preamble. Without post-closure care, the probability of future contamination greatly increases. In addition, the costs of cleaning up a release that might occur in the absence of post-closure care would likely be much greater than if the site had been properly maintained and monitored and under constant surveillance.

9. Section 258.60 (i) and (j) Notation on the Deed to Property

Proposed § 258.31(e) would require that following closure of the entire landfill, the owner or operator must record a notation on the deed or some other instrument normally examined during a title search that will notify any potential purchaser in perpetuity that: (1) The land has been used as a municipal solid waste landfill, and (2) its use is restricted under § 258.31(c)(3). The proposed rule also would allow an owner or operator to request permission from the State to remove the notation if all wastes were removed from the facility.

Some commenters argued that an owner or operator should not be allowed to remove the notation from the deed under any circumstances, asserting that potential purchasers should be made aware of the full history of the site and be alerted to potential defects or liabilities associated with the land, even when all wastes have been removed. These commenters argued that the persistence and the difficulties of detecting leachate plumes and the uncertainties of evaluating the potential for future health risks further supported their recommendation of retaining the notation on the deed.

The Agency considered the commenters' concerns but disagrees that property owners should never be allowed to remove the notation on the deed and is finalizing the rule as proposed. The Agency continues to believe that if all wastes have been removed from the facility, including any contaminated ground-water and soils, then the property poses no greater threat than one that never was used to manage municipal solid waste. This provision is consistent with subtitle C requirements for hazardous waste facilities. However, the Agency strongly believes that a decision to remove the deed notation must be considered carefully and that in practice very few owners or operators will be able to take advantage of the provision. To ensure that this option is allowed only on a very limited basis, § 258.60(j) of the final rule limits the option to remove the notation to the deed to facilities located in approved States if the owner or operator can demonstrate that all wastes have been removed from the facility. To demonstrate that all wastes have been removed from the facility, the owner or operator would not only need to remove the entire contents of the landfill and its containment structures, but also demonstrate that no contamination exists in the ground water or in the soils at the facility.

Commenters also asserted that the owner or operator should be required to provide a copy of the deed and its notation to the State in order to ensure compliance and facilitate enforcement. Consistent with the provision of self-implementing standards throughout today's final rule, the Agency is requiring in § 258.60(i) that owners or operators notify the State Director that the notation on the deed has been recorded and place a copy of the notation in the facility operating record.

One commenter recommended that the requirement to include a notation on the deed be required as part of the closure requirements rather than as a post-closure care activity. The Agency acknowledges the commenter's concern that the notation on the deed be filed in a timely manner; however, in those rare circumstances where all wastes are removed as part of closure, it will be necessary to complete closure before it can be determined if a notation on the deed needs to be recorded. The Agency has made two minor changes to today's final rule to encourage owners or operators to file the deed notation quickly. First, while the requirement itself is being finalized as proposed, it is included in § 258.60(i) of the closure criteria to encourage the owner or operator to file the notation concurrent with the closure certification. Second, as discussed in appendix H of today's preamble, § 258.71(b) of the final rule specifies that an owner or operator is not released from closure financial assurance requirements until he has filed the notation on the deed. In most instances, by tying the requirement to file a notation to the deed to the release from closure financial assurance, the owner or operator will have a financial incentive to file the deed notice quickly.

10. Sections 258.60(h) and 258.61(e) Closure and Post-Closure Care Certifications

In §§ 258.30(e) and 258.31(f), the Agency proposed that following closure of each landfill unit and following completion of the second phase of the post-closure care period for each unit, owners and operators must submit certifications that closure and post-closure care activities have been performed in accordance with the approved plans. The rule would require that a "qualified party" provide objective verification, based on a direct review of the landfill, that closure and post-closure care activities had been properly completed. Upon approval of the certification by the State, the owner or operator would be released from financial responsibility requirements under § 258.32(f). The Agency would defer to the States for establishing procedures for implementing these requirements (e.g., the types of certification that would satisfy the requirements, documentation requirements, deadlines for submissions).

The Agency received numerous comments on the certification requirements. Most of the commenters favored requiring some type of certification or notification of the completion of closure and post-closure care to ensure that owners and operators close their landfills and maintain them in accordance with their approved plans, although comments on the specific requirements (e.g., how frequently to certify post-closure care, procedural requirements) were varied.

One commenter questioned how the post-closure care requirements would be implemented in the absence of the State approving the closure certification.

Some commenters recommended that certification requirements be left to the discretion of the States. Others contended that certification by a "qualified party" would not be necessary and, in fact, could be counterproductive in States where facilities are inspected on a regular basis.

The Agency continues to believe that certifications are necessary to ensure that closure and post-closure activities are performed in accordance with the closure and post-closure plans, especially because the completion of closure and post-closure care triggers the release of the owner or operator from financial assurance requirements and other requirements. Moreover, because the final rule utilizes a self-implementing approach, the Agency remains convinced that it must require certifications in the revised criteria rather than simply providing guidance to the States. Closure and post-closure care certifications provide an objective way to verify that closure and post-closure care activities have been performed in accordance with the plans.

The Agency also agrees with those commenters who favored including a notification requirement of the completion of closure and post-closure care, particularly for facilities located in unapproved States. The Agency agrees that it is important for the States to have the opportunity to review the adequacy of closure and post-closure care activities, particularly in unapproved States, and addresses this concern in two ways in the final rule. First, §§ 258.60(h) and 258.61(e) of the final rule require all owners and operators to notify the State that closure or post-closure care has been completed and certified by an independent registered professional engineer or approved by the Director of an approved State. Second, the certification must be placed in the facility operating record and thus can be reviewed to verify that closure and post-closure care have been performed in accordance with the plans. The requirement to notify the State prior to the beginning of closure combined with this subsequent notification of the completion of closure or post-closure care should help to ensure that municipal solid waste landfills are closed properly and maintained after closure.

The Agency does not believe that the lack of approval of the closure certification, particularly in unapproved States, precludes an owner or operator from conducting post-closure care. The certification requirements in the final rule are intended to be self-implementing and as a result, the owner or operator is responsible for beginning post-closure care after closure has been completed.

The Agency also disagrees with comments that certification of closure and post-closure care may be inappropriate and counterproductive in States that inspect facilities on a regular basis. Requiring an owner or operator to submit certifications following the completion of closure and post-closure care activities will not interfere with any scheduled State inspection, and in fact could help to verify the accuracy of the owner or operator's certification. At the same time, the Agency does not wish to impose any additional burdens on States' inspection capabilities, which could result if they were required to review all closure and post-closure care activities in lieu of a certification requirement.

The Agency also received a number of suggestions regarding the specific certification requirements. Many of the commenters expressed concern that the requirements to obtain a certification by a "qualified party" was too vague to be effective and recommended that independent registered professional engineer certifications be required.

The Agency agrees with commenters that objective closure and post-closure certifications are essential for avoiding any potential conflicts of interest and ensuring protection of human health and the environment and that more specific requirements concerning the qualifications of the certifying party are necessary to ensure the adequacy of the certification. The Agency, therefore, is requiring in the final rule that certifications be obtained from independent registered professional engineers (i.e., registered professional engineers not in the employ of the owner or operator), consistent with requirements under subtitle C and other federally mandated certification programs (e.g., Clean Water Act grants).

The Agency also received comments on the proposed requirements to certify closure and post-closure care on a per-unit basis and to certify the completion of post-closure care at the end of the entire post-closure care period. Some commenters supported this approach and noted that it is consistent with subtitle C. Some commenters, however, recommended requiring certification of closure only at final closure of the entire landfill and at the end of the post-closure care period for the entire landfill to reduce costs. Others suggested requiring post-closure care certifications more frequently than proposed (e.g., at least every five years) to ensure that post-closure care activities are being conducted in accordance with the approved plan.

The Agency is finalizing as proposed the requirement that closure certifications be submitted after closure of each unit. Although certifying closure of each unit rather than closure of the entire facility may be more expensive, unless closure of each unit is certified when closure is performed, it will not be possible at the time of final closure to determine if the previous closures were performed in accordance with the approved closure plan. This approach is consistent with the subtitle C closure and post-closure care requirements applicable to owners and operators of hazardous waste treatment, storage, and disposal facilities, which require closure and post-closure by requiring certifications on a per-unit basis.

The Agency also believes that requiring one certification to be performed at the end of the post-closure care period for each unit is sufficient and is therefore finalizing this provision as proposed. Because an owner or operator must continue to monitor ground water during the post-closure care period, the State will be notified and actions will be taken if releases are detected. It should also be noted, however, that certification at the end of the post-closure care period for each unit is the minimum required under these regulations. States have the option of requiring more frequent certifications if they determine that they are necessary.

Appendix H—Supplemental Information for Subpart G—Financial Assurance Criteria

Under the proposed rule, the owner or operator of a new or existing MSWLF would be required to demonstrate financial assurance for the costs of conducting closure, post-closure care, and, as applicable, corrective action for known releases. These requirements have been retained in today's rule. Also an owner or operator would be required to demonstrate to the State that he had planned for these future costs by preparing written cost estimates based on detailed written plans required in § 258.30(b) and 258.31(c). The final rule also requires these cost estimates. Cost estimates and financial assurance documentation are required to be kept in the facility operating record. Alternative recordkeeping locations and alternative schedules for recordkeeping and notification requirements may be

established by the Director of an approved State.

While the proposed rule would require owners and operators to demonstrate financial assurance for closure, post-closure care, and corrective action for known releases, it did not specify the types of mechanisms that could be used to demonstrate financial assurance. Instead, a performance standard was proposed that specified criteria that would have to be satisfied by any mechanism that was used. In response to comments on the proposed rule, the final rule provides greater specificity concerning acceptable financial instruments, while continuing to provide States with considerable flexibility in establishing their financial assurance programs. In addition, the Agency is intending to propose under separate rulemakings a revised corporate financial test that would apply to owners or operators of MSWLFs and a financial test specifically designed for local governments.

Numerous comments were received by the Agency on the financial assurance requirements. Major issues raised by commenters are summarized below. All comments are responded to fully in the Financial Assurance Comment Response Document.

1. Section 258.70(b) Effective Date of Financial Assurance Requirements

Under the proposed rule, the financial assurance requirements would be effective on the same day as all other requirements applicable to MSWLFs, i.e., 24 months following promulgation of the final rule.

A number of commenters objected to the proposed effective date of the financial assurance requirements and suggested that the financial assurance requirements be decoupled from the rest of the rule and that the comment period be extended. In support of this suggestion, several commenters stated that it may be impossible for some local governments to meet requirements immediately if they operate on yearly budgets. Other commenters argued that facilities closing in the near future may have difficulty accumulating sufficient funds to assure 30 years of post-closure care. Another commenter argued that it was unreasonable for EPA to expect the States to have a framework in place to approve the operating and design criteria and the financial assurance mechanisms within 18 months of the final rule.

The Agency considered the commenters' concerns and agrees that additional time will help ensure the effective implementation of the financial assurance requirements. Accordingly, EPA has decided to make the financial responsibility requirements effective 6 months later than the remainder of today's rule. The financial assurance requirements contained in today's rule will be effective 30 months following publication of today's rule. The Agency agrees that owners and operators, especially local governments, may face difficulties in obtaining financial assurance mechanisms within 24 months, particularly since the proposed rule did not include a financial test designed for local governments. The 6 additional months will allow the Agency time to finalize a financial test for local governments, thus providing an additional mechanism for compliance to those members of the regulated community. Extending the effective date will also allow the financial market sufficient time to respond to new demands for financial instruments, thereby facilitating compliance and helping to ensure effective implementation of the requirements. The Agency continues to believe that the financial assurance requirements are important to the effective implementation of the overall program for management of MSWLFs. Accordingly, the Agency does not believe it is appropriate to decouple these requirements from the rest of today's rulemaking.

2. Need for Financial Assurance

As stated in the preamble to the proposed rule, EPA believes that the financial assurance requirements will help ensure that owners and operators adequately plan for the future costs of closure, post-closure care, and corrective action for known releases, and will help ensure that adequate funds will be available when needed to cover these costs if the owner or operator is unable or unwilling to do so. These benefits are similar to those derived from the subtitle C hazardous waste and subtitle I petroleum underground storage tank financial responsibility programs.

The Agency received a number of comments addressing the benefits and costs anticipated from requiring owners or operators to demonstrate financial assurance. Commenters who supported the financial assurance requirements agreed that the requirements would foster long range financial planning by MSWLF owners and operators and further argued that the requirements are minimal requirements that are necessary to provide protection for health and the environment. These commenters argued that the requirements should not have to await the development of State regulations.

Other commenters, however, did not believe that EPA had adequately established the necessity of financial assurance requirements for protecting human health and the environment from threats posed by MSWLFs. These commenters argued that MSWLFs do not pose the same hazards as subtitle C landfills, and therefore the financial assurance requirements should be less stringent than those for subtitle C facilities. A few commenters contended that the requirements would provide little benefit, while another group of commenters argued that because financial responsibility is not required by statute, it is outside EPA's Congressional mandate and has been imposed arbitrarily by the Agency.

Several commenters raised the concern that the costs associated with obtaining financial assurance instruments would be high, and in some cases, would drive out of business owners and operators who could otherwise meet technical requirements (thereby leaving the costs of closure and post-closure care unfunded), or prevent owners and operators from starting operation of new sites. Some commenters noted in particular the high costs associated with 30 years of ground-water monitoring during the post-closure care period. A number of commenters were concerned that small private operators, small local governments, and MSWLFs operated in remote and sparsely populated areas in particular would be unduly burdened by the requirements.

EPA believes that it has ample authority to require financial assurance demonstrations under today's rule. Sections 1008(a) (3), 4004(a), and 4010 of RCRA, as amended by HSWA, direct the Agency to develop criteria to protect against potential adverse impacts to human health and the environment from solid waste disposal activities. The Agency has determined that financial responsibility is a necessary component of the regulatory program and is essential to protecting human health and the environment.

The Agency has long maintained that financial responsibility requirements are an important component of any regulatory scheme, such as today's Part 258 criteria. In establishing the regulatory framework for the management of municipal solid waste, the Agency believes that inclusion of financial responsibility requirements will promote the overall statutory and regulatory goals of RCRA by encouraging the development and implementation of sound waste management practices both during and

at the end of active facility operations. Specifically, the requirements will ensure that adequate funds are available to cover the costs of closure, post-closure care, and corrective action activities, which, if not planned for, often are left unfunded. Additional governmental expenditures would then be necessary to ensure continued protection of human health and the environment.

Technical requirements are effective in protecting human health and the environment only if funds are available in a timely manner to conduct these activities. Because the costs of closure, post-closure care, and corrective action could be substantial, advance planning and earmarking of funds is necessary. Without financial assurance, there is no guarantee that the costs of closure, post-closure care, and corrective action for known releases will be borne by the responsible owner or operator. Financial assurance demonstrations also encourage owners and operators to better internalize the future costs associated with the landfills and reinforce risk management incentives, since the costs of closure and post-closure care or the need for corrective action should be less when the landfill is operated in an environmentally protective manner.

The Agency does not agree with commenters who maintain that the risks posed by MSWLFs do not warrant financial assurance requirements. Improper closure of MSWLFs has been shown to create environmental problems. Also, potential hazards, such as methane gas generation and the potential for explosions, associated with the disposal of municipal solid waste are considerable. Currently, approximately 20 percent of sites on the National Priorities List are MSWLFs. In sum, experience suggests that the potential problem of unfunded obligations at MSWLFs is significant.

In light of the clear need for financial assurance, the Agency believes that the burden of the financial assurance requirements promulgated today is neither excessive nor beyond the practicable capability of owners and operators. The financial assurance requirements in today's rule have been structured such that the assurance is required only for costs of activities that are certain to be needed, and the amount of financial assurance is based on site-specific estimates of the costs of closure, post-closure care, and corrective action. Less stringent financial assurance requirements would not ensure that adequate funds will be available when needed to cover these costs. The Agency maintains that these costs are legitimate business expenses and should be accounted for in the operating budgets of MSWLFs in order to operate efficiently.

The Agency does not believe that owners and operators will be unreasonably burdened by the costs of obtaining financial assurance mechanisms. The cost of complying with the financial assurance requirements should not be excessive and will be a relatively small part of the total costs of complying with today's rule. The requirements do not force owners or operators to immediately provide full funding of closure, post-closure care, or corrective action costs, but rather to demonstrate future availability of those funds. For example, today's rule allows trust funds to be built up gradually (see section 7.a of this appendix). By allowing an extended "pay-in" period for trust funds, the burden of funding closure, post-closure care, and corrective action obligations will be spread out over the economic life of the facility, thereby making trust funds one of the most viable financial assurance mechanisms for many owners and operators.

In addition, the Agency is providing numerous third-party alternatives to trust funds including surety bonds, letters of credit, insurance, and a guarantee. These financial instruments do not require the owner or operator to put up full funding in advance. The cost of a guarantee will be negligible for most owners and operators who are eligible to use that mechanism. The cost of obtaining the other third-party mechanisms for use in demonstrating financial assurance for subtitle C facilities is also low, estimated to be about one and a half to two percent of the obligation annually.

Finally, as discussed further in section 7.a of this appendix, in a separate rulemaking effort, the Agency is considering revising the criteria of the corporate financial test currently available to subtitle C hazardous waste facilities. The Agency intends to propose that this revised corporate test also be available to owners or operators of MSWLFs, thus allowing financially strong firms to demonstrate that setting aside funds in a trust fund or obtaining third-party assurance of their closure, post-closure care and corrective action costs is unnecessary. The cost of such a test should be minimal, amounting only to the cost of making the required demonstrations. Furthermore, as discussed below in section 7.b of this appendix, the Agency will be proposing a financial test developed specifically for local governments. The Agency anticipates that the effective date of both of these new tests will coincide with the effective date of today's financial responsibility requirements.

The Agency analyzed the impact of all of the proposed requirements, including financial assurance requirements, on members of the regulated community and examined in particular the impact on local governments and on small private entities in the Regulatory Impact Analysis (RIA) to the final rule. As discussed in that document, the Agency has concluded that most local governments and owners of privately-owned landfills will not experience significant impacts due to the financial assurance requirements alone.

As discussed in greater detail in section IV.A of the preamble, however, the Agency recognizes that today's requirements may pose a significant burden on small landfills located in small and remote communities. Small landfills in approved States that meet certain criteria are eligible for exemption from the design, ground-water monitoring and corrective action requirements of today's rule. Therefore, while owners or operators of these landfills are subject to financial responsibility requirements for closure and post-closure care, they are eligible for exemption from the corrective action financial responsibility requirements. Owners or operators of small landfills receiving exemptions from ground-water monitoring would only be required to demonstrate financial assurance for the remaining costs of closure and post-closure care, which include final cover installation and maintenance and other routine maintenance activities during the post-closure care period. By not requiring a ground-water monitoring system to be monitored and maintained for thirty years, the burden on small and remote communities will be minimized.

The Agency does believe, however, that the costs of complying with the financial assurance requirements can be lessened if approved States adopt a broad range of financial assurance approaches. Toward that end, § 258.74(h) of today's final rule authorizes the use, in approved States, of any financial assurance mechanism that satisfies the performance standards specified in § 258.74(k) in addition to those mechanisms explicitly identified in the rule. The Agency urges approved States to consider adopting a broad range of financial assurance approaches to promote compliance by all owners and operators.

3. Section 258.70(a) Applicability

The proposal would require all owners and operators of MSWLFs, except State and Federal government agencies, to demonstrate financial responsibility for closure, post-closure care and corrective action for known releases. The proposal also requested comment concerning whether Indian tribes should be subject to the requirements.

a. Applicability to State and Federal Government Entities

The proposal would exempt from the required financial assurance demonstrations MSWLFs that are owned or operated by government entities whose debts and liabilities are the debts and liabilities of a State or the United States. The Agency recognizes that Federal and State governments have the requisite strength and stability to fulfill their financial assurance obligations for MSWLFs.

No commenters disputed the Agency's position that Federal and State governments have the financial strength and incentives to cover the costs of closure, post-closure care, and corrective action for known releases. Nevertheless, several commenters argued that State and Federal government entities should be required to demonstrate financial assurance. These commenters argued that as a matter of fairness all levels of government should be treated the same; either all government entities should be required to demonstrate financial assurance or all should be excluded from the requirements. Other commenters asserted that exempting any MSWLFs will disrupt competitive forces within the industry.

Two commenters had specific questions about how the requirement should be interpreted. One commenter urged EPA to exempt public authorities whose debts and liabilities are the debts and liabilities of a State. This commenter argued that a single-purpose authority is as fiscally sound as a State because if a State decides to dissolve the authority, the State must take over any bonded debt issued by the authority. The other commenter suggested that the Agency should clarify whether the requirements apply to landfills owned by a State or Federal government, but operated and/or leased by a local government.

After considering these comments, the Agency is promulgating the final rule as proposed. MSWLFs owned or operated by those government entities whose debts and liabilities are the debts and liabilities of a State or the United States will continue to be exempted from financial assurance requirements. In some cases, this will include single-purpose public authorities. In other cases, however, the debt of single-purpose authorities may not be supported by the full faith and credit of the State under that State's laws. In those cases, it is not appropriate to exempt the authority from financial assurance requirements.

The Agency believes that differences between Federal and State governments and other governmental entities provide sufficient rationale for treating these entities differently with regard to the financial assurance requirements. Federal and State governments are permanent and stable institutions that exist to safeguard health and welfare, and they have the requisite financial strength and incentives to cover the costs of closure, post-closure care, and corrective action for known releases. The availability of resources to Federal and State agencies differs from the availability of resources to local governments. Federal and State governments have flexibility in their annual budgets, which facilitates reallocation of funds for a specific purpose. Federal and State entities also can access sources of financing such as intergovernmental transfers relatively quickly. Further, since few MSWLFs (four percent) are owned or operated by Federal or State agencies, exempting these facilities will not significantly disrupt competition in the solid waste disposal industry.

As indicated in the preamble to the proposed rule, the financial assurance exemption extends to cases in which a MSWLF is owned by a State or Federal government entity and operated by a private party or local government (or operated by a State or Federal government entity while owned privately or by a local government). A State or Federal owner may, of course, require the private or local government operator to provide financial assurance by contractual agreement. The exemption may also extend to a single-purpose authority if the authority's debts and liabilities are the debts and liabilities of the State.

b. Applicability to Local Governments

The proposal would exempt only Federal or State governments. All other owners and operators, including local governments, would be required to provide financial assurance for closure, post-closure care and corrective action at MSWLFs that they own or operate. Local governments include both general purpose local governments (e.g., municipalities, counties, cities, townships, towns, and villages) and special purpose local governments. Special purpose local governments, generally designated as either public authorities or special districts, may perform a single function or a limited range of functions. Both general purpose local governments and special purpose entities were required to provide financial assurance under the proposed rule.

The Agency received numerous comments on its proposal to require local governments to demonstrate financial assurance. Commenters supporting the Agency's proposal argued that local governments may be unable to raise the necessary funds through their taxing powers and that local governments may not be able to make long-term advance commitments of future funds necessary to provide adequate assurance. Commenters argued further that because of these limitations on the availability of funds, all owners and operators, including local governments, need to factor the cost of closure and post-closure care into the management of an MSWLF in order to ensure that the site is not abandoned. Several commenters suggested that many MSWLFs operated by local governments could become future Superfund sites if financial assurance is not required of local governments.

Many other commenters, however, urged the Agency to exempt some or all local governments (including cities, counties, and towns) from financial assurance requirements for a variety of reasons. Some commenters asserted that local governments operating MSWLFs have a direct stake in providing for the health, welfare and protection of their communities, and should not be burdened with rules that interfere with the efficient execution of their duties. Several commenters argued that local governments should not be required to demonstrate financial responsibility because they rarely go bankrupt and in those cases when they have gone bankrupt, they have paid all of their obligations eventually. Several commenters contended that many local governments have sources of funds that would be available in an emergency to cover the costs of closure, post-closure care, and corrective action, such as unused taxing authority, user fees, bonds, and short-term notes, thus making financial responsibility requirements unnecessary.

Some commenters argued that local governments should be exempted from financial assurance requirements because of the burden such requirements would impose. Several

commenters stated that the cost of demonstrating financial assurance would cause many local governments to abandon their solid waste disposal programs. They argued that new part 258 criteria will increase the costs of operation, and that financial assurance requirements would only compound the economic burden on MSWLF owners by requiring up-front money or guarantees. Other commenters indicated that financial assurance requirements may cause solid waste management to shift from the public sector to the private sector if local governments choose to contract with private commercial MSWLF facilities rather than provide the amount of assurance required for their own landfills.

Finally, commenters suggested that States should be given flexibility in deciding whether to exempt their own local governments from the financial assurance requirements.

The Agency has carefully considered all of the comments on this issue, and, for the reasons discussed below, continues to believe it appropriate to distinguish between local governments and Federal and State governments when applying the financial assurance requirements. Under today's final rule, therefore, local governments remain subject to financial responsibility requirements.

The Agency agrees with commenters who asserted that local governments may be unable to raise sufficient funds through taxation and that local governments may not be able to make long-term commitments of future funds. While several commenters contended that local governments would have the ability to raise funds in a timely manner sufficient to cover the costs of closure, post-closure care and corrective action, these commenters did not supply the Agency with evidence that this was generally true for all local governments. While the Agency recognizes that many local governments, like Federal and State governments, are permanent entities that act to secure the well-being of their citizens, there is substantial variation among local governments in terms of size, financial capacity, and functions performed. It is therefore likely that there is substantial variation among these governments in terms of their ability to meet their closure, post-closure care and corrective action obligations in a timely manner. Exempting all local governments from the requirements would provide insufficient protection of human health and the environment.

Furthermore, although local governments are unlikely to abandon their MSWLFs even in the event of bankruptcy, studies of the probability of bankruptcy among local governments indicates that (relative to Federal and State governments) they are generally (1) more limited in terms of financial resources and less flexible in their annual budgets, thereby making reallocation of a substantial amount of funds for a specific purpose in a given year more difficult; (2) less able to obtain their traditional sources of financing (e.g., bond issues, taxes, and intergovernmental transfers) quickly enough to ensure funding in a timely manner; and (3) more prone to fiscal emergencies than Federal and State governments. Also, while localities in bankruptcy may be able to meet their obligations over the long term, obligations such as closure and corrective action may require immediate financing to ensure adequate protection of human health and the environment. In light of the need to ensure that all owners and operators meet their environmental obligations in a timely manner, combined with the variability among municipalities, the Agency believes that a uniform set of applicable requirements is necessary. Therefore, the Agency has decided against allowing States to decide whether to exempt their own local governments.

The Agency decided not to exempt any special category of local governments from today's final rule (with the exception of small landfills qualifying for an exemption in approved States as discussed above). While the Agency recognizes that local governments may vary in their ability to meet the costs of closure, post-closure care, and corrective action, the Agency is unable to support a variance for any type of local government (e.g., cities, counties). The same concerns that prompted the Agency to include local governments generally apply to these special categories as well. Requiring all local governments to demonstrate financial assurance should encourage appropriate advanced planning for the costs of closure, post-closure care, and corrective action for known releases by these entities.

The Agency does not believe that the requirements will generally be burdensome to local governments. As discussed above, the cost of the financial assurance requirements are a relatively small part of the total cost of compliance with today's rule. Because the requirements will be applied to all MSWLF owners and operators, regardless of whether they are local governments or private companies, the Agency does not believe that the requirements will cause a shift from public to private ownership of solid waste management facilities.

The Agency does recognize the potential burden that financial assurance requirements may impose on some local governments. To minimize this burden, the Agency is finalizing several alternate mechanisms that may be used to demonstrate financial assurance and encourages States to develop innovative financial responsibility mechanisms. To further reduce the potential burden of these provisions on local governments, the Agency is developing a financial test designed specifically for local governments that is expected to be proposed soon after today's rule is promulgated (see section 7.b below). The Agency currently anticipates that the effective date of the financial test for local governments will coincide with the effective date of the financial responsibility provisions of this rule (30 months following publication of today's rule). Financially strong local governments that demonstrate that they possess the necessary financial capacity and have adequately planned to meet their MSWLF obligations in a timely manner will be able to use a financial test and will not be required to acquire additional financial assurance mechanisms. The specific criteria of this financial test for local governments and projected estimates of the test's availability to local government owners and operators for use to meet today's requirements will be discussed more fully in a separate notice of proposed rulemaking.

c. Applicability to Indian Tribes

The preamble to the proposed rule requested comments on whether to exempt Indian Tribes from financial responsibility requirements, and on whether Indian Tribes have the requisite financial strength and incentives to cover the costs of closure, post-closure care, and corrective action for known releases.

In response to this request, many commenters urged the Agency to exempt Indian Tribes from the financial responsibility requirements. Commenters argued that Indian Tribes are sovereign in their own right and, like State governments, are permanent and stable institutions that exist to safeguard health and welfare. Commenters noted that Tribal governments have the same financing options (e.g., bonding and taxation) available to them as do States and the Federal government. In addition, commenters asserted that due to the small populations of reservations, solid

waste disposal problems on reservations are likely to be of a small magnitude and to require less funding than those of other MSWLFs. Other commenters argued that with such small populations and a high unemployment rate, most Tribes would be unable to meet the financial assurance requirements.

Some commenters, however, opposed exemption of Indian Tribes from financial assurance requirements. These commenters argued that Tribal land is often leased to government and industry for use as disposal facilities. As a result, financial assurance for MSWLFs on Tribal lands is as necessary as for any other MSWLF. Another commenter noted that Indian landfills in Arizona are causing adverse impacts on the environmental quality of the State and that there is currently no mechanism to address those problems.

The Agency has carefully considered the commenters' concerns and has decided not to exempt Indian Tribes from the financial responsibility requirements of today's rule. Section 1004 of RCRA defines "municipality" to include Indian Tribes. The Agency is concerned that Indian Tribes, for reasons similar to those discussed for municipalities above, do not have the requisite financial strength to ensure funding of their closure, post-closure care and corrective action obligations. While a number of commenters suggested that Indian Tribes have the financial strength to meet these obligations, none provided data to support an exemption from the financial assurance requirements. The Agency believes, therefore, that it is in the interests of protecting human health and the environment to require Indian Tribes to comply with the financial assurance requirements of today's rule. Financially strong Indian Tribes, like financially strong municipalities, will be able to comply with the requirements using the local government financial test to be proposed in the near future.

4. Sections 258.71(b), 258.72(b), and 258.73(b) Scope of Coverage

a. Financial Assurance for Corrective Action for Other Than Known Releases

The proposal would require financial assurance for the costs of known corrective actions to be demonstrated only at the time that the costs of these activities are estimated (i.e., at the time of remedy selection). The proposal would not include coverage requirements for the potential costs of corrective action for unknown releases and requested comments on this decision. The Agency also requested information concerning appropriate methods for estimating the costs of corrective action for other than known releases.

EPA received several comments supporting its decision to require financial assurance for corrective action for known releases only and for deferring financial responsibility requirements for potential future releases. Commenters agreed that it would be difficult to set an appropriate level of coverage for corrective action for future releases because it would be difficult to predict the probability and costs associated with a release, which are highly dependent on location-specific and operation-specific factors. One commenter stated that financial assurance requirements for other than known releases are unnecessary because financial assurance will be required once the release is discovered. Another commenter suggested that additional financial responsibility requirements for corrective action would be more appropriately established by States because they have greater familiarity with the site-specific conditions within their jurisdictions.

A few commenters believed that the scope of the financial assurance requirements should be expanded to include additional assurances, declaring that EPA should prevent the possibility that unanticipated corrective action costs could be left unfunded by requiring financial assurance for these costs.

These commenters did not, however, suggest methods for establishing levels of coverage.

The Agency agrees with the majority of commenters that current data are not adequate to accurately establish national uniform levels of coverage for future corrective actions. Moreover, it believes that an approach to establishing such coverage levels which relies upon a facility risk analysis could require considerable time and expense to complete, and could thereby delay the implementation of the basic financial assurance regulations. Therefore, the Agency is not at this time promulgating financial assurance requirements for other than known releases. While the Agency recognizes that the possibility exists that unanticipated corrective action costs may go unfunded, it believes that the requirements for financial assurance for known corrective action being promulgated today will go far towards minimizing any potential unfunded obligations. The requirements promulgated today will ensure that the costs of remediation of releases are borne by the appropriate facility owner or operator.

While the promulgation of uniform national requirements for corrective action for unknown releases applicable in all States will require a substantial amount of additional analysis, States may wish to consider whether data are already available in their jurisdictions to support state-specific rulemakings. Today's rule does not preclude States from promulgating their own requirements for corrective action for other than known releases if they deem such requirements necessary and appropriate supplementals to today's requirements.

b. Financial Assurance for Third-Party Liability

In the preamble to the proposed rule, the Agency indicated that it considered, but chose to defer, adoption of financial responsibility requirements for third-party liability claims arising from off-site personal injury or property damage. The reasoning for this deferral was two-fold. First, as discussed in the preamble, the Agency had insufficient data to set appropriate levels of third-party liability coverage for MSWLFs. Second, the Agency was concerned that owners and operators of MSWLFs would encounter difficulties in obtaining financial assurance mechanisms to fulfill this requirement. The Agency requested data and other information regarding appropriate levels of third-party liability coverage.

While a few commenters recommended that the financial assurance requirements include requirements for third-party liability coverage, most of the comments supported EPA's decision to defer third-party liability financial assurance requirements. Commenters noted that both the likelihood and the size of third-party awards are variable and difficult to predict. Due to the uncertainty of the costs of liability claims, some commenters said that additional time and data would be necessary for both the insurance industry and MSWLF owners and operators to respond to the need for liability coverage. Other commenters pointed out that some MSWLFs may never face third-party liability claims, and suggested that the Agency limit itself to requiring financial assurance only for expenses that are certain to be incurred. Another commenter stated that it is more appropriate for States to establish third-party liability requirements, since third-party liability claims are defined under applicable State law.

Upon consideration of the comments regarding this issue, the Agency determined that the conditions that originally led to the decision to defer third-party liability coverage requirements continue to prevail. The Agency therefore is continuing to defer promulgation of any requirement. While the Agency received some information from one commenter related to third-party liability coverage levels, this information did not include data relevant to setting uniform national coverage levels, and the Agency has been unable to gather sufficient data from other sources.

As discussed in the preamble to the proposal, some data concerning the types of off-site property damage and bodily injury that could be associated with the operation of a MSWLF are currently available. The inherent limitations of these data, however, do not provide the Agency with an adequate basis upon which to determine appropriate coverage levels. The available data are largely concentrated on only one of the hazards posed by MSWLFs, namely, methane gas explosions. Other hazards for which fewer data are currently available (e.g., releases to ground and surface water) could also contribute significantly to potential liabilities faced by owners and operators of MSWLFs and therefore must be given consideration in the development of third-party liability coverage levels. In addition, the data on methane gas explosions did not include the costs of damages resulting from these accidents at MSWLFs. The Agency, therefore, still lacks sufficient basis to establish specific coverage levels for MSWLFs.

The Agency's second reason for deferring third-party liability also continues to prevail. Insurance coverage for MSWLFs continues to be limited. Owners and operators of MSWLFs may therefore encounter difficulties in obtaining third-party liability coverage. The Agency is currently aware of only two insurers who actively provide coverage to MSWLFs. While some other insurers are entering the market, experience in providing this type of coverage is even more limited than experience in providing coverage for hazardous waste facilities. The Agency believes, however, that such an assurance market, whether for insurance or another mechanism provided by a third party, will begin to develop following promulgation of today's final technical criteria imposing uniform design and operating standards that in turn will allow insurers to better assess the risks associated with MSWLFs. In addition, such a deferral will allow States a period during which State-sponsored mechanisms can be developed to assist owners and operators of MSWLFs in complying with financial assurance requirements. These State-sponsored mechanisms might then be adopted for coverage of third-party liability requirements.

Given that a majority of owners and operators of MSWLFs are local government entities, the Agency believes that State governments could become actively involved in the development and sponsorship of financial assurance mechanisms for third-party liability or in providing financial assurance through various funding schemes. Today's regulation allows States to explore and implement alternatives to traditional mechanisms for compliance with closure and post-closure care and corrective action financial assurance requirements. These mechanisms may then be applicable if third-party liability coverage is required in the future or if an approved State wishes to require financial responsibility for third-party liability coverage.

5. Sections 258.71(b), 258.72(b), and 258.73(b) Release From Financial Assurance Requirements

Under the proposed rule, owners and operators would be released from financial assurance requirements for closure, post-closure care, and corrective action following State approval of the certifications of completion of these activities submitted under §§ 258.30(e), 258.31(f), and 258.58 (f) and (g). Following the receipt of the certification from the owner or operator verifying that closure, post-closure care, or corrective action had been completed in accordance with the approved plans, the State would be required to notify the owner or operator in writing that he no longer was required to demonstrate financial responsibility for these activities. If the State had reason to believe that the activities had not been conducted in accordance with the approved plan, the State would notify the owner or operator and include a detailed statement of the reasons for not releasing the owner or operator from the financial assurance requirements.

While the Agency did not receive comments on the actual provisions for release from the financial assurance requirements, two commenters contended that funds should never be released because of the perpetual possibility of failure. Other commenters raised a related issue that owners or operators should be allowed to receive reimbursements for closure, post-closure care or corrective action costs as they are incurred. These commenters further argued that particularly for owners or operators using instruments that require the owner or operator to set funds aside (e.g., a trust fund), withholding the release of such funds until all activities have been completed would effectively require owners and operators to provide twice the amount of funds necessary to meet expenses.

The Agency decided to finalize the procedures for release from financial assurance requirements substantially as proposed with one change in the procedures for release for closure financial assurance and with minor changes to account for the self-implementing approach of the final rule. Owners and operators will be released from financial assurance requirements upon demonstrating compliance with the certification requirements for closure, post-closure care, or corrective action as specified in §§ 258.60(h), 258.61(e), or 258.58 (f) and (g). Consistent with the self-implementing approach of the final rule, the final rule includes the requirement that owners or operators also must notify the State that the required certifications are in the facility operating record and that financial assurance is no longer being maintained. As a condition of being released from closure financial assurance, the Agency is adding the additional requirement that owners or operators must notify the State that they have recorded the notation on the deed to property as required in § 258.60(i) and have included a copy of the notation in the facility operating record.

In general, the Agency continues to believe that owners and operators should be released from financial assurance requirements only upon certification that closure, post-closure care and/or corrective action activities have been completed. Unless the owner or operator remains subject to financial assurance requirements until closure, post-closure care and/or corrective action have been certified, the Agency cannot be assured that funds will be available if additional activities are required to comply with the technical requirements. The Agency, however, does not believe that the potential benefits (e.g., potential governmental expenditures avoided) derived from indefinite maintenance of financial assurance sufficiently outweigh the costs incurred by owner or operator in maintaining such assurances. Performance of the required activities in conformance with the plan and subsequent certification by a qualified engineer of those activities upon

completion will minimize the probability that additional financial assurance will be needed.

The Agency agrees with commenters that in cases where an owner or operator has actually set funds aside in a mechanism dedicated to the payment of such costs (e.g., in a trust fund, and in some cases, closure and post-closure insurance), it may be desirable to allow the owner or operator to be reimbursed for costs of closure, post-closure care, and corrective action activities as they are incurred prior to final certification, in order to minimize the financial burden to the owner or operator. Therefore, the rule specifically provides for reimbursement from trust funds or insurance policies in cases where sufficient funds remain to cover any remaining cost. Requests for reimbursement must be made directly to the trustee or the insurer. If sufficient funds would remain in the trust to cover remaining costs, the trustee may grant the request (see also discussion of the trust fund and insurance in section 7.a below).

The final rule also requires that the owner or operator record the notation on the deed to the property indicating that the property has been used as a MSWLF and its future use is restricted as a condition of being released from financial assurance requirements for closure. The Agency added this provision to provide a financial incentive to help ensure that the notation is properly filed.

6. Sections 258.71(a), 258.72(a), and 258.73(a) Cost Estimates

The Agency proposed in §§ 258.32 (b), (c), and (d) that the owner or operator of each MSWLF would develop written site-specific estimates of the costs of conducting closure, post-closure care, and corrective action for known releases. These cost estimates would be the basis for determining the amount of financial assurance required under §§ 258.32 (f), (g), and (h). Commenters raised a number of issues and questions concerning the preparation of cost estimates.

a. Deadlines and Procedures for Preparing Cost Estimates

The proposed rule did not include specific procedures or deadlines for preparing cost estimates. The development of such requirements was left to the States.

A number of commenters stated that EPA should develop guidance tailored specifically to estimating costs of closure and post-closure care of MSWLFs to facilitate the preparation of estimates and ensure more consistency. One commenter argued that unless the rule included more detail on preparing cost estimates, States would use the guidance document developed for subtitle C facilities, which they argued is inappropriate for MSWLFs. Two commenters stated that procedures and deadlines for preparing cost estimates are not necessary.

The Agency disagrees with commenters who felt that the subtitle C guidance would be inappropriate for MSWLFs. Cost estimating procedures for construction and engineering activities like those that would be required for closure, post-closure care, and corrective action are relatively uniform, and procedures developed for estimating costs for subtitle C facilities should be easily adopted to account for differences between hazardous and solid waste landfills. The Agency believes, therefore, that the guidance documents developed for subtitle C could provide a useful model for today's rule.

The Agency also believes that it is unnecessary to include specific deadlines for preparing cost estimates in the rule. Since cost estimates must be prepared in order to establish the amount of financial assurance required, the Agency believes that the deadline for obtaining financial assurance will ensure that cost estimates will be prepared in a timely manner. However, consistent with the self-implementing approach of the final rule, the Agency has added to the final rule a requirement that owners or operators must notify the State Director that the cost estimates have been placed in the operating record.

b. Third-Party Costs

The proposed rule would require cost estimates to account for the costs, in current dollars, of hiring a third party to conduct the activities described in the closure and post-closure plans and in the corrective action program as specified in §§ 258.30, 258.31, and 258.58.

The Agency received a number of comments on the requirement that cost estimates be based on the cost of hiring a third party to perform the required activities. While one commenter expressed support for this provision as proposed, several argued that using third-party costs for cost estimates would be burdensome and unnecessary. Some commenters stated that local governments, in particular, should be able to base cost estimates on the cost of performing the work themselves because they maintain a broad range of in-house technical and engineering capabilities, which could be used to perform closure, post-closure care, and corrective action. They also contended that unlike private operators, even if a local government were to go bankrupt, it could not escape its obligations and would eventually use its own personnel to conduct closure and post-closure care.

After considering these comments, the Agency continues to believe that it is appropriate to base cost estimates on the costs of hiring a third party to conduct closure, post-closure care and corrective action. This provision ensures that adequate funds will be available to hire a third party to carry out the necessary activities in the event that the owner or operator declares bankruptcy or does not have all of the technical expertise necessary. In addition, the Agency does not agree that local governments will always be able to use their own personnel to conduct closure and post-closure care. For example, in the event of bankruptcy or other financial hardship, a local government may be required to reduce the number of local government employees, including employees managing the local government's MSWLF and other staff who might be capable of conducting closure, post-closure care or corrective action activities. The local government would, under such circumstances, be forced to obtain the services of third-parties to carry out closure, post-closure care, and corrective action activities.

Furthermore, the requirement to base cost estimates on third-party costs will not impose a significant burden on an owner or operator. The Agency has studied the differences between first and third-party costs for closure in the context of Subtitle C and has found that the costs are not significantly different. For example, the cost of hiring a third party to close a landfill that handles 2,000 tons of waste per year is not significantly greater (less than ten percent) than the costs that would be incurred if the owner or operator of the landfill performed the closure activities. Because the activities that would be performed for closure, post-closure care and corrective action would be similar for all MSWLFs, the Agency believes that third-party costs will not be significantly higher for these units as well.

c. Sections 258.71(a)(1), 258.72(a)(1), and 258.73(a) Scope of Costs To Be Covered in Cost Estimates

The proposed rule would require closure and post-closure cost estimates to be based on the cost of closing the MSWLF at the point in the landfill's active life when the extent and manner of its operation would make closure and

post-closure care (as described in the closure and post-closure plans) the most expensive. For example, if an owner or operator operates the MSWLF on a cell-by-cell basis, the estimate should account for closing the maximum number of cells open at any one time. Several commenters objected to calculating closure and post-closure cost estimates based on the most expensive point of performing these activities, arguing that the requirement would be burdensome. One commenter noted that the requirement does not account for the fact that closure of a MSWLF is an ongoing process that is part of daily operation. This commenter argued that because the actual area of a landfill increases quickly for a short time after a landfill is opened and decreases soon afterwards as partial closure is begun, basing cost estimates on the maximum cost of closure prior to the start of any partial closure activities would result in closure cost estimates that will quickly become excessive.

The Agency considered the commenter's concerns and is clarifying in the final rule its intent regarding the scope of cost to be included in cost estimates. The Agency continues to believe that the cost estimates must be high enough to ensure that adequate funds always are available to conduct the required activities whenever they are required, including premature closures. However, the Agency agrees with commenters that the cost estimates need not include the costs of closing landfill phases that have already undergone partial closure. Therefore, the Agency is adding language to the final rule to clarify that the closure cost estimate must account for the most expensive costs of closing the maximum area of the MSWLF that would ever need to be closed at any one time.

For example, an owner or operator of a MSWLF, which is constructed using a cellular design, may choose to open only one cell of the landfill at a time, close the cell completely (i.e., with installation of a final cap) once it is filled, and only then to open a new cell. In this case, the cost estimate would include the costs of closing one cell. Therefore, owners and operators of facilities that close units as they are filled (i.e., conduct partial closures) may be allowed to demonstrate less financial assurance than those that close all units simultaneously because the maximum costs of closure at any time will be less than if the entire MSWLF was closed simultaneously.

d. Sections 258.71(a)(2), 258.72(a)(2), and 258.73(a)(1) Adjustment of Cost Estimates for Inflation

The proposed rule would require the closure, post-closure, and corrective action cost estimates to be adjusted annually for inflation until the entire landfill had been closed to ensure that over time, cost estimates would continue to reflect the actual costs of performing closure, post-closure care or corrective action. Corrective action cost estimates were to be updated for inflation until the end of the corrective action period even if the corrective action extended beyond closure of the MSWLF. The proposed rule left to the States the responsibility for establishing procedures for updating cost estimates. The proposed rule also requested comments on the desirability of requiring annual adjustments of the post-closure cost estimates during the post-closure care period.

A number of commenters supported the proposal to require annual inflation adjustments to the post-closure care cost estimate only until closure, while a few commenters supported adding a provision that would require annual inflation adjustments until the end of the post-closure care period. Some commenters suggested periodic (e. g., every three or five years) rather than annual updates to the cost estimates, arguing that the expense involved in the updating procedure and the likelihood that costs would not be substantially changed by inflation made annual updates inappropriate and unnecessary.

Upon consideration of the public comments, the Agency finalized the requirements as proposed with a change to the requirements for post-closure cost estimates discussed below. The Agency continues to believe that the uncertainties inherent in inflation and interest rates make an annual cost update highly desirable. If the added costs due to inflation are not fully accounted for in annually updated cost estimates, adequate funds may not be available when needed. Moreover, the Agency does not believe that updating cost estimates to account for inflation will be difficult or costly. The Agency suggests the use of inflation factors that are readily available to owners and operators (e. g., the Implicit Price Deflator for Gross National Product as published in the "Survey of Current Business," a Department of Commerce publication) or specify other inflation factors that must be used to adjust the estimates. Owners and operators may wish to refer to the provisions in 40 CFR 264.142 and 264.144 and the accompanying guidance materials when making the updates. The Agency has no evidence from its experience with the Subtitle C program that annual updates for inflation have been costly or burdensome, or that they have caused implementation problems.

The Agency agrees with commenters who suggested that post-closure cost estimates should be updated until the end of the post-closure care period, and consequently, the Agency has decided to impose such a requirement in today's rule. Following closure, the owner or operator must continue to update the post-closure cost estimate for inflation for the duration of the post-closure care period. While the Agency recognizes that on certain rare occasions, an owner or operator may not be available (e. g., the company operating the landfill may no longer be in business following closure) to update the estimates, thus making implementation difficult, the Agency believes that in most cases, an owner or operator will be available. The majority of MSWLFs are operated by local governments. These local governments are unlikely to disappear following closure of their landfills because they exist to perform a number of other functions. The Agency does not believe that this change will prove burdensome.

e. Sections 258.71(a)(3), 258.72(a)(3), and 258.73(a)(2) Adjustment of Cost Estimates Due to Plan or Facility Changes

The proposed rule would require the owner or operator to increase the cost estimates for closure and post-closure care whenever changes to the closure and post-closure plans or changes at the facility (e.g., increases in design capacity, increases in the maximum area open, more extensive monitoring requirements) would cause the estimated cost to increase (§§ 258.32 (b)(3), and (c)(3)). Consistent with the October 24, 1986, proposed Subtitle C rule requiring financial assurance for corrective action, the proposal specified that an owner or operator would be required to increase a corrective action cost estimate if, at any time during the corrective action period, a change in the corrective action program or in facility conditions would cause corrective action costs to exceed the cost estimate (§ 258.32(d) (2)). Whenever a cost estimate is increased, the owner or operator would increase the level of financial assurance required under sections §§ 258.32 (f), (g), and (h).

The proposed rule in §§ 258.32 (b)(4) and (c)(4) would allow the owner or operator to request a reduction in the amount of the cost estimate if the owner or operator could demonstrate that

changes in facility conditions would result in a decrease in the maximum costs of closure (e.g., partial closure of the landfill that reduces the maximum area of the landfill that ever needs to be closed), or post-closure care (e.g., less maintenance is required during the later years of the post-closure care period). Cost estimates for corrective action could be reduced if the owner or operator could demonstrate that the estimate exceeds the maximum remaining costs of corrective action (§ 258.32(d)(3)). The Agency did not propose procedures or deadlines for adjusting cost estimates, but did request comments on whether the revised criteria should include such procedures.

The Agency received no comments on the requirement that cost estimates be adjusted to account for changes in facility operation or changes in the facility closure, post-closure care or corrective action plans. Consistent with the self-implementing approach of today's rule, the Agency is finalizing the requirements for adjustments to cost estimates with certain procedural changes. If the current cost estimate exceeds the maximum remaining costs of closure, post-closure care or corrective action, whichever is applicable, the owner or operator may decrease the cost estimate if he notifies the State of the decrease in the cost estimate and places a justification for the decrease in the facility operating record.

f. Section 258.72(a) Calculation of Post-Closure Costs

The proposed rule would require post-closure care activities to be carried out over a two-phase period. Phase I would last 30 years and the length of Phase II would be established by the States. The proposed rule would require the post-closure cost estimate for each phase to be based directly on the activities described in the approved post-closure care plan required under § 258.31(c), and to account for the post-closure care costs of the entire landfill. The estimate for each phase would be derived by multiplying the annual costs (in current dollars) of post-closure care activities by the number of years of care required in that phase. Because not all post-closure care activities are conducted on an annual basis (e.g., cap replacement or monitoring well replacement may only be required periodically), the preamble to the proposal clarified that the total post-closure cost estimate should include these periodic costs as well as the annual costs.

Several commenters were concerned with the duration of the post-closure care financial assurance requirements. Some commenters believed that financial assurance for the entire 30 year Phase-I post-closure period was unnecessary. Others suggested that the cost of financial assurance for the entire 30-year period would place an excessive burden on owners and operators. Suggestions for alternative periods included five and ten years and the number of years of operating life of the facility remaining on the effective date of the regulations. Another commenter said that the costs of post-closure maintenance decline as a closed landfill stabilizes, and that the owner or operator should be allowed to take this into account when making his post-closure cost estimate.

The Agency believes that to fulfill the goals of the financial assurance requirements, the total estimated costs of post-closure care must be demonstrated. Requiring financial assurance for only five to ten years or for the number of years remaining in the facility's operating life would not ensure that funds are available to complete post-closure care in the event that the owner or operator is unable or unwilling to do so. As discussed in Appendix F of the preamble, the proposed two-phased post-closure care period has been eliminated in the final rule in favor of one 30-year period with the option available, in approved States, to reduce or increase the length of the period as necessary to protect human health and the environment. For most owners and operators, therefore, financial assurance will only be required for 30 years of post-closure care. In approved States, where State-specific or site-specific factors justify a reduction in the 30-year period, owners and operators will be required to provide financial assurance for the reduced period only. The Agency does not believe that obtaining financial responsibility for 30 years of post-closure care will impose a significant additional burden on owners and operators. Many States already require some financial assurance for post-closure care; therefore, MSWLFs in these States should already be demonstrating financial assurance for the costs of post-closure activities.

The Agency agrees with the commenter that in some cases the costs of post-closure care maintenance may decline as the closed landfill stabilizes. The Agency has always intended that the post-closure cost estimate account for changes in costs over the post-closure care period. In its guidance on preparing post-closure cost estimates for hazardous waste facilities, the Agency stated that the estimates should include costs required annually and costs that will occur less frequently during the post-closure care period (RCRA Guidance Manual for subpart G Closure and Post-Closure Care Standards and subpart H Cost Estimating Requirements, OSWER Policy Directive #9476.00-5, January 1987, pp. 4-7). Consistent with this intent, today's final rule requires that the post-closure care cost estimate account for the total costs of post-closure care, including both those costs that will be incurred annually and those that occur only periodically. This change will allow owners and operators to prepare cost estimates that reflect any costs of post-closure care that decline over time. If the owner or operator can demonstrate in the post-closure plan that the level of maintenance activities required will decline over time, then the corresponding cost estimate can reflect the costs of reduced care in later years. Similarly, if the post-closure plan is revised during the post-closure care period because less extensive maintenance is required, the cost estimate may also be revised. The cost estimate also may be revised during the post-closure care period to reflect that fewer years of post-closure care remain. However, in considering reductions to the cost estimate, it is important to consider carefully potential future costs such as ground-water monitoring well replacement costs or extensive cover repairs that would not be required on an annual basis.

g. Section 258.73(a) Corrective Action Cost Estimate

The Agency proposed that a corrective action cost estimate be prepared once a release has been detected and the owner or operator is required to undertake corrective action. This estimate would be calculated by multiplying the annual costs of corrective action by the number of years required to complete the corrective action program. The owner or operator would then demonstrate financial assurance for the amount of the corrective action cost estimate.

The Agency received a number of comments on corrective action cost estimates and financial assurance requirements. Some commenters stated that the proposed financial assurance requirements for corrective action were too stringent and that the amount of the cost estimate should be reduced by reducing the period for which financial assurance for corrective action must be demonstrated. One commenter suggested that the requirements should explicitly state that assured funds for

corrective action must be distinct from other assured funds.

One commenter argued that it would be inappropriate to estimate corrective action costs during the planning stage of a corrective action because estimating remediation costs is possible only after corrective action remedies have been specified. Another commenter noted that the proposed approach to developing the corrective action was too complicated and suggested that it would be simpler and more accurate to base cost estimates on the projected real cost of the action.

The Agency considered the commenters suggestions and is finalizing the cost estimating requirement for financial assurance for corrective action with one change discussed below. The Agency believes it is necessary that the cost estimate reflect the total costs that will be incurred for the entire corrective action period in order to adequately protect human health and the environment. Reducing the period of time over which the cost estimate is calculated would not provide adequate assurance of corrective action costs in the event that the owner or operator is unable or unwilling to continue to finance corrective action. (If a trust fund is used to demonstrate financial assurance, payments will be made into the trust over the first half of the corrective action period to cover the costs of the second half. Adequate assurance is provided because actual funds are being placed in the trust fund to ensure that future corrective action activities will be paid for. This is discussed in greater detail in section 7.a below.) The Agency does, however, agree that it is inappropriate, in most cases, to develop corrective action cost estimates prior to selection of the remedy. Section 258.74 of today's rule requires that financial assurance be established within 120 days after the remedy is selected. This should provide adequate time for owners and operators to develop a cost estimate based on the selected remedy and demonstrate financial assurance.

The Agency agrees with the comment that financial assurance for corrective action should be distinct from that for closure and post-closure care. Although owners and operators may choose to establish financial assurance using a single financial mechanism for some combination of closure, post-closure care, and corrective action, owners and operators should distinguish the amount of funds assured for each activity under a given financial assurance mechanism. While explicitly required by the rule, this is necessary to ensure that the amount of funds assured is sufficient to cover the costs of each activity when needed, in compliance with the performance criteria (§ 258.74(1)).

The Agency also agrees that the corrective action cost estimate should be based on the actual costs of the action and is finalizing the rule to require that the corrective action cost estimate account for the total costs of corrective action. The Agency wishes to clarify that the cost estimate must account for the costs of all activities required during the duration of the corrective action. In developing the estimate, the owner or operator must take into account the costs of actions required annually during the period as well as those required periodically over the period. This approach for estimating costs is consistent with the approach used for developing post-closure cost estimates discussed in more detail above. The Agency's experience with the subtitle C post-closure care program, which has similar requirements to today's rule, suggests that this method of calculating corrective action costs has not imposed unreasonable burdens on owners and operators.

h. Sections 258.71(a), 258.72(a), and 258.73(a) Cost Estimate Recordkeeping and Review

For recordkeeping purposes, the proposed rule would require the owner or operator to maintain copies of the most recent cost estimates for closure, post-closure care, and corrective action for known releases at the landfill until the owner or operator has been released from financial assurance for that activity under §§ 258.32 (f), (g), and (h).

Commenters suggested several additional requirements concerning the review of cost estimates. One commenter suggested that cost estimates should be available for public review, and that it would be difficult for the public to review cost estimates at the landfill. Another commenter suggested that States should be responsible for reviewing closure, post-closure care and corrective action cost estimates, while other commenters stated that EPA should retain that responsibility.

Consistent with the self-implementing approach of today's final rule, the Agency is finalizing a somewhat amended recordkeeping and review requirements. Under the final rule, owners and operators are required to notify the State Director that the cost estimates have been filed in the operating record of the facility. As required under § 258.29(b) of today's rule, owners or operators also must furnish these estimates upon request or make them available at all reasonable times for inspection by the State Director. Once the State is in possession of such records, the public may obtain access to these records through State Freedom of Information proceedings. The Agency believes that these provisions will provide sufficient opportunity for public review of the cost estimate. The final rule does not require State review of cost estimates consistent with the self-implementing nature of the rule.

i. Owners and Operators With Multiple Facilities

The proposed rule would require owners and operators to base the amount of financial assurance required on facility-specific cost estimates. If owners and operators own multiple facilities, the amount of financial assurance would be equal to the sum of all cost estimates at each facility.

Two commenters expressed concern about the effect of requiring cumulative coverage of multiple facilities managed by the same owner or operator. One commenter stated that the Agency should avoid making the assumption that in cases where multiple facilities are owned by one entity, all facilities will be required to close at the same time. This commenter suggested that the Agency consider an actuarial approach that would take into account the relatively small probability that all facilities will close or require corrective action at the same time, and allow for cost estimates that do not account for the total costs of closing all facilities simultaneously. Another commenter suggested that subtitle I requirements for financial responsibility for underground storage tanks would provide a model for this type of approach. (Subtitle I requires coverage of third-party liability and on-site cleanup costs resulting from potential future releases from petroleum underground storage tanks. Financial assurance levels are set for different classes of facilities based on type of operation and number of tanks owned or operated.)

The Agency considered the commenters' concerns, but is adopting the rule as proposed. If owners or operators own or operate multiple facilities, the amount of financial responsibility must be equal to the sum of all cost estimates at each facility. The Agency decided to defer action on special cost estimating requirements applicable to owners and operators of multiple facilities. The issue of whether owners and operators of facilities regulated under multiple programs

should be exempt from the general requirement to provide financial assurance for the total costs of closing all of their facilities simultaneously has implications for the financial responsibility programs under subtitles C, D, and I, and as such, goes substantially beyond the scope of today's rulemaking. Therefore, further study of the issue in the context of all applicable RCRA programs is necessary before exempting owners or operators of multiple facilities from these requirements.

The Agency believes that the subtitle I approach for setting assurance levels would be inappropriate for MSWLFs. The costs of potential future releases from tanks requiring assurance under subtitle I are costs that may or may not be incurred by the owner or operator, while the costs of closure, post-closure care, and corrective action for known releases subject to financial assurance under part 258 are certain to be incurred. The greater certainty of these costs makes them difficult to aggregate in a manner similar to the subtitle I approach while maintaining adequate protection of human health and the environment and therefore justifies the more stringent requirements. In addition, under subtitle I, the amount of financial assurance required is uniform for all tanks owned or operated by a single entity. This also serves to facilitate aggregation of costs in a manner that would be difficult and inappropriate for MSWLFs, where closure, post-closure care and corrective action costs vary among the facilities of one owner or operator.

7. Section 258.74 Performance Standard for Financial Assurance

a. Performance Standard Approach

The proposed rule would not specify the types of financial assurance mechanisms allowed. Instead, the proposal specified in § 258.32(e) a performance standard for a financial assurance program that must be satisfied to demonstrate compliance with the financial assurance requirements under §§ 258.32 (f), (g), and (h). The performance standard was designed to ensure that mechanisms allowed by the States (e.g., trust funds, letters of credit, State Funds, etc.) would satisfy the overall goals of financial assurance.

As proposed, the performance standard would permit States to authorize use of financial mechanisms that met five criteria: (1) Ensure that the amount of funds assured is sufficient to cover the costs of closure, post-closure care, and corrective action for known releases when needed; (2) ensure that funds will be available in a timely fashion when needed; (3) guarantee the availability of the required amount of coverage from the effective date of these requirements or prior to the initial receipt of solid waste, whichever is later, until the owner or operator is released from financial assurance requirements under §§ 253.32 (f), (g), (h); (4) provide flexibility to the owner or operator for demonstrating compliance with the financial assurance requirements; and (5) be legally valid, binding and enforceable under State and Federal law.

The preamble to the proposed rule noted that the financial assurance mechanisms currently authorized under subtitles C and I, if properly drafted, would satisfy these performance criteria. The Agency requested comments on the proposed financial assurance performance standard, including the use of a performance standard in lieu of specifying acceptable mechanisms.

A number of commenters agreed with EPA's decision not to specify the types of financial assurance mechanisms that would be allowed. These commenters noted that the variability in State regulation of the banking and insurance industries would make specification of financial assurance mechanisms difficult to develop at the national level. Several other commenters stated that the financial assurance performance standards, as proposed, represent the minimum standards that should be required of MSWLF owners and operators in all States.

Many other commenters expressed concern that the performance standard lacked sufficient detail to guide States in the development and implementation of the financial assurance requirements with any consistency among States. Several commenters urged the Agency to require States to allow the use of all financial assurance mechanisms authorized under subtitle C. Specifically, many commenters argued that if interpreted strictly, EPA's performance standard requiring funds to be available from the effective date of the regulations or prior to the initial receipt of solid waste, whichever is later, could be interpreted to preclude a trust fund with a pay-in period, which is allowable under subtitle C. These commenters stated that fully funded trusts are not affordable, and other mechanisms are not available to many local governments and small businesses. Therefore, they argued, if trust funds with pay-in periods are not allowed, many landfills could be forced to close.

Other commenters requested clarification of whether the subtitle C financial test "multiples" requirement—i.e., the owner or operator must demonstrate tangible net worth and working capital equal to six times the financial responsibility obligations assured—would apply to MSWLF owners and operators. EPA was urged either to eliminate the requirement or to apply it to issuers of financial instruments (e. g., banks, insurance companies) to ensure that these issuers of third-party mechanisms are judged on the same basis as owners and operators using the financial test.

The Agency also received comments expressing concern over the stability of institutions, such as banks and insurers, issuing financial assurance instruments. One commenter recommended that only cash, surety bonds, or certificates of deposit be allowed for demonstrating financial responsibility for corrective action. This commenter argued that unlike closure or post-closure care, the costs of corrective action are likely to force many owners and operators out of business, thereby necessitating the use of assurance mechanisms that are not linked to a company's future financial health.

The Agency agrees with commenters that the performance standard, as proposed, did not provide sufficient guidance to ensure that financial mechanisms obtained in compliance with the rule would be adequate. This lack of specificity in the proposed performance criteria could have resulted in significant inconsistencies among State programs. The Agency, therefore, has adopted a modified performance standard approach to financial assurance in the final rule. This approach consists of a revised set of performance standards and specified financial mechanisms that may be used to demonstrate financial assurance. The rule also specifies minimum provisions of each mechanism that must be satisfied to be considered an acceptable mechanism, including minimum qualifications for providers of assurance.

The revised performance criteria in today's rule are identical to those described in the proposed rule (renumbered in the final rule as § 258.74(1)), with the exception of the criterion in proposed § 258.32(e)(4) specifying that States consider flexibility to the owner or operator when developing financial assurance requirements. This criterion has been deleted from the final rule because it was redundant with the discussion of State approved mechanisms. While the

Agency continues to believe that a performance standard-based approach is most appropriate to allow States sufficient flexibility to select and tailor their financial assurance programs to allow as many options for compliance as possible, the performance criteria should ensure that all allowable financial mechanisms will provide for adequate financial assurance.

All of the mechanisms currently allowed under subtitle C are authorized to be used to comply with the financial assurance requirements in today's rule. In particular, the Agency specifically allows the use of gradually-funded trust funds to demonstrate financial assurance for the costs of closure, post-closure care, and corrective action. The Agency expects a majority of approved States will include these specified mechanisms, together with other mechanisms as appropriate, in their list of authorized compliance options.

In addition to the instruments specified in the performance standard, EPA is currently re-evaluating, and will consequently propose revisions to, the subtitle C corporate financial test as part of a separate rulemaking. The Agency would anticipate proposing at the same time conforming changes to the part 258 financial responsibility performance standard to allow this revised corporate test to be used as a compliance option for demonstrating financial responsibility for MSWLFs. These changes to the corporate financial test would be proposed on a timeframe similar to the local government financial test.

With respect to financial assurance for corrective action, the Agency recognizes that the cost and duration of a corrective action are likely to differ from the cost and duration of closure and post-closure care, and that allowable mechanisms for assuring closure and post-closure care may consequently differ from those appropriate for assuring corrective action. The discussion of allowable mechanisms below notes where today's rule accounts for such variations to address corrective action (e.g., the length of the trust fund pay-in period; the acceptability of insurance).

The provisions of today's rule are intended to ensure the reliability of each mechanism relative to the overall performance standard. Given the minimum requirements specified, the Agency believes that it is not necessary to limit allowable mechanisms, as some commenters suggested, to cash, surety bonds or certificates of deposit. The Agency tailored these minimum qualifications to the particular characteristics and industry practices of the providers of the financial mechanisms (e.g., sureties, banks, insurers, etc.) in order to ensure the effectiveness of the mechanism as well as the stability of the provider. The Agency believes this approach is preferable to applying the same criteria to all types of providers. In particular, the Agency believes it would be inappropriate to require all providers of financial assurance mechanisms to satisfy the subtitle C financial test, which was designed to assess a private corporation's ability to meet certain costs, not to evaluate the ability of a financial service's firm to carry out its business.

Commenters also urged the Agency to encourage the States to develop alternative financial assurance mechanisms. They argued that EPA should make the States aware of the need to be creative and expansive when devising financial responsibility mechanisms, and should provide additional guidance to the States. Several commenters urged the Agency to encourage States to establish State funds as an alternative mechanism, arguing that State funds are the only alternative available to landfill owners with limited resources.

The Agency agrees with commenters that alternative financial assurance mechanisms should be explored. To that end, today's rule permits the use, in States with approved programs, of any financial assurance mechanism that satisfies the performance standard. Subsections (7) and (8) below discuss specific alternatives that States may wish to consider.

To accommodate the self-implementing approach being taken for this rulemaking, today's rule also does not specify procedural requirements. The Agency recognizes that in order to function most effectively, many of the mechanisms specified in today's rule will require some interaction with the State regulatory agencies. To assist in uniform development of such procedural requirements in approved States, the Agency is including a brief discussion of some of these procedural requirements below. Certain of these more specific procedures and considerations are not, however, included in today's rule.

The following mechanisms are allowed in the final rule:

(1) Section 258.74(a) Trust Fund

Trust funds are sums of money set aside to cover anticipated future costs (e.g., closure, post-closure care or corrective action) and are typically overseen by a trustee (typically the trust department of a bank). The owner or operator would be the beneficiary of the trust, with the trustee responsible for making payments from the trust under certain conditions described below. The trustee is required to manage the trust according to the terms of the trust agreement and in accordance with applicable state law. A copy of the trust agreement must be placed in the facility's operating record. To ensure that the trust fund is properly managed, the final rule specifies that the trustee must have the authority to act as a trustee, and that the trustee's operations must be regulated and examined by a Federal or State agency. The governmental body with authority over the trustee's operations will depend on the type of financial institution the trustee represents. For example, a state-chartered financial institution, which might include commercial banks, savings and loans, mutual savings banks, credit unions and State-licensed foreign banks would be regulated by a State authority. Nationally-chartered commercial banks, nationally-licensed foreign banks and all Washington, DC, commercial banks are overseen by the Comptroller of the Currency in the Trust Division of the U.S. Treasury Department. Finally, nationally-chartered savings and loans and mutual savings banks are regulated by the Office of Theft Supervision, while nationally-chartered credit unions are overseen by the National Credit Union Administration. (Additional information concerning the qualifications of trustees may be found in "Financial Assurance for Closure and Post-Closure Care: A Guidance Manual, May 1982.)

While the final rule does not specify the wording of the trust agreement, an approved State implementing a part 258 MSWLF program may wish to specify wording to ensure that the trust is managed in a manner consistent with the performance criteria described in § 258.74(1). Wording of a model trust agreement could specify that the trust is irrevocable (i.e., that the owner or operator may neither alter the terms of the trust agreement nor terminate the trust except with the written consent of the trustee) and might specify the types of investment policies that the trustee must follow in managing the trust. The wording for the trust fund specified in subtitle C (40 CFR 264.151(a)) could be used as a model for trust agreement terms.

While the ultimate value of a closure or post-closure care trust fund at the time of closure must be equal to the cost estimates for closure or post-closure care (unless multiple instruments are being used for financial assurance as discussed below), the final rule allows

the trust to be gradually funded over the expected life of the facility and specifies how the value of the trust must be built up. This build-up would be accomplished through annual payments into the fund in a manner similar to that required under subtitle C. The amount of these payments, in the case of a trust fund for closure or post-closure care, is to be calculated using the following formula:

$$\frac{CE - CV}{Y}$$

where CE is the current closure or post-closure cost estimate (updated for inflation or other changes), CV is the current value of the trust fund (i.e., the value of the funds already paid into the trust), and Y is the number of years remaining in the pay-in period. The maximum pay-in period is the life of the facility permit, if applicable, or the remaining number of years of facility operating life. If the amount of the closure or post-closure cost estimate changes, the amount of the annual payments into the trust fund should be recalculated using the formula described above.

The requirements for a corrective action trust fund differ somewhat from the requirements for a closure or post-closure care trust fund for two reasons: (1) The size and duration of corrective action costs are significantly greater; and (2) corrective action financial assurance is required only upon the detection of a release while closure and post-closure financial assurance are required prior to the activities being undertaken. Thus, to be structured like the trust fund for closure and post-closure care, which ensures that the trust is fully funded by the time that the funds are needed (i.e., by the time that the facility closes), a trust fund for corrective action would need to be fully funded as soon as corrective action is triggered, which would pose an undue burden to nearly all owners or operators. To make the corrective action trust fund available to greater numbers of owners and operators while ensuring that funds are available to complete corrective action, the Agency is allowing an owner or operator to fund the trust gradually over the first half of the corrective action period in an amount that would ensure sufficient funds to cover the costs of corrective action incurred during the second half of the corrective action period.

The corrective action trust fund would therefore operate as follows. First, the maximum allowable pay-in period for a corrective action trust fund is one-half of the length of the corrective action period. Second, the required balance in a trust fund for corrective action at the end of the corrective action pay-in period must be sufficient to cover the remaining corrective action costs after the end of the pay-in period (i.e., the costs of corrective action to be incurred during the second half of the corrective action period). For example, if corrective action will take place over a ten-year period, payments into the trust fund would start at the beginning of the period and end in the fifth year. At the end of the fifth year, the amount of money in the trust fund would have to be sufficient to cover the corrective action costs estimated for the remaining five years of the corrective action period.

The trust fund for corrective action would be built up in a manner to that described for closure and post-closure care trust funds, with changes to accommodate the different pay-in period for trust funds for corrective action (as discussed above). The specific amount of the annual payments is to be calculated using the following formula:

$$\frac{RB - CV}{Y}$$

where RB is the most recent estimate of the required trust fund balance for corrective action (i.e., the total costs to be incurred during the second half of the corrective action period), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

In developing this pay-in formula the Agency accounted for the size and duration of corrective action costs and the resultant concern that more stringent financial assurance requirements could induce bankruptcies among facility owners and operators, thus increasing the number of unfunded corrective actions. Particularly since corrective action costs for known releases will be incurred concurrently with the costs of providing financial assurance for corrective action, the Agency is concerned that the impact of these two sets of simultaneous costs may increase the number of bankruptcies and the amount of unfunded corrective actions among small owners or operators. Such an outcome would defeat the purpose of more stringent requirements, which is to assure that all corrective action costs will be paid by owners or operators.

In addition, the financial assurance requirements for closure and post-closure care are designed to provide assurance before the beginning of closure or post-closure care; thus financial assurance is being provided for a future obligation.

Section 258.74(a)(5) of the final rule specifies that the initial payment into a closure or post-closure care trust fund must be made prior to the initial receipt of waste or the effective date of the rule, whichever is later. The initial payment into a corrective action trust fund must be made no later than 120 days after the corrective action remedy has been selected.

In order to ensure that adequate funds will be available for closure, post-closure care, and corrective action if an owner or operator switches from one of the other third-party mechanisms to a trust fund, today's final rule includes specific requirements for the initial payment into the trust in the event that an owner or operator is switching mechanisms. Today's rule requires that, if the owner or operator establishes a trust fund after having used one or more alternate mechanisms, the initial payment into the trust fund must be at least the amount that the fund would contain if the trust fund were established initially and annual payments were made according to the specifications of the rule. For example, if an owner or operator switching to a trust fund had been demonstrating financial assurance for ten years, he would need to calculate what the balance of a trust fund would have been, had he established one ten years previously.

Because the trust fund involves setting aside an owner or operator's actual funds (rather than obtaining a third-party guarantee that funds will be available when needed), the rule provides for reimbursement to the owner or operator for expenditures for closure, post-closure care, and corrective action as long as sufficient funds remain in the trust to cover the remaining costs. Under this rule, funds are released by the trustee in cases where sufficient funds remain in the trust to cover remaining closure, post-closure care and corrective action costs if the owner or operator documents and justifies the reimbursement and places this information in the facility's operating record. The owner or operator must also notify the State Director that the documentation of the justification for reimbursement has been placed in the operating record and that he has received reimbursement. The Agency notes that such a reimbursement system is suitable only for mechanisms such as trust funds, into which actual funds have been set aside. Because other

mechanisms that provide for third-party guarantees of payment (e.g., letters of credit) do not involve setting funds aside, owners and operators would not have to provide funds twice to meet the requirements. However, the owner or operator could be permitted to reduce the level of coverage of the other mechanisms provided that coverage remains sufficient to cover all remaining costs.

The Agency wishes to make clear that reimbursement of incurred expenses from a trust fund would not in any way release an owner or operator from the financial assurance requirements. All owners and operators would remain subject to the requirements until completion of closure, post-closure care and/or corrective action is certified and the State is notified in accordance with §§ 258.71(a), 258.72(a), and 258.73(a).

Under today's rule, trust funds may be terminated by the owner or operator only upon release from the financial assurance requirements, or if an alternate financial assurance mechanism is substituted.

(2) Section 258.74(b) Surety Bond Guaranteeing Payment or Performance

A surety bond guarantees payment for, or performance of, closure, post-closure care, or corrective action if the holder of the bond (the facility owner or operator) fails to fulfill these obligations. Surety bonds are generally issued by a surety company. Under the terms of a payment bond, the surety company issuing the bond promises to pay the costs of closure of post-closure care activities if the owner or operator is unable or unwilling to carry out those activities. With a performance bond, the surety company promises to either pay the required activities or to perform the required activities on behalf of the owner or operator. The Agency is allowing only performance bonds to be used to demonstrate financial assurance for corrective action. Because financial assurance for corrective action is not required until a release has occurred, a payment bond would have to guarantee that the owner or operator would fully fund a standby trust fund at the time a release was detected. This is a highly unlikely scenario because an owner or operator would most likely opt to use a trust fund with a pay-in period. If the owner or operator is using a payment bond to satisfy the requirements, he must establish a standby trust fund at the same time that the assurance mechanism is established. (A more detailed discussion of standby trusts is provided below.) A copy of the bond must be placed in the facility's operating record.

To ensure that the surety bond provides an adequate guarantee of funds, the final rule requires that the surety company issuing the bond must be listed in Circular 570 of the U.S. Department of the Treasury. Circular 570 is a list of surety companies which have been approved for writing construction bonds and other surety bonds for federal projects. The rule also requires that the bond must be issued in an amount equal to the cost estimates for closure, post-closure care or corrective action (unless multiple instruments are used as described below) and must be effective prior to the initial receipt of waste or by the effective date of the rule, whichever is later (in the case of closure and post-closure care), or, in the case of corrective action, within 120 days of the selection of the corrective action remedy. The rule also requires surety bonds to contain provisions preventing cancellation of the bond either by the surety, except with 120 days advance notification of cancellation to the owner or operator and to the State, or by the owner or operator unless an alternate mechanism has been obtained. Without such cancellation provisions, a third-party provider of assurance might cancel a mechanism immediately prior to closure or during the post-closure care or corrective action period in order to avoid payment of those costs.

While not required in today's rule, States implementing a part 258 MSWLF program may wish to specify the wording of surety bonds used to demonstrate financial assurance to help ensure that the bonds meet the performance standard and to minimize State review burden. States can use the surety bond language specified in subtitle C requirements as a model (40 CFR 264.151 (b) and (c)).

Section 258.74(b)(4) of today's rule requires the establishment of a standby trust fund to accompany a surety bond. A standby trust fund serves as a depository for funds collected from the providers of financial assurance. Standby trust funds are only necessary when an independent depository is required. For example, under Federal law, all payments to a Federal agency or official must be deposited with the U.S. Treasury and cannot be earmarked for a specific use without reallocation (31 U.S.C. 3302). Therefore, to guarantee that the funds assured for a specific facility are directed to the costs of closure, post-closure care or corrective action for that site, a standby trust fund may be necessary. The standby trust should be structured in a manner substantially similar to the trust fund described above.

In States implementing today's revised criteria, it may be necessary to require owners and operators using other third-party mechanisms to establish a standby trust for those mechanisms if State law would otherwise prevent the State regulatory authority from accessing the funds provided by the mechanism. If a State determines that an account can be established within its treasury into which funds drawn on the financial assurance mechanisms can be deposited and withdrawn without special action to pay the site-related costs, then such a State may use its treasury as the depository mechanism and no standby trust would be required. Each State should examine its State law on the issue of earmarking funds in and appropriating funds from its general treasury.

(3) Section 258.74(c) Letter of Credit

A standby letter of credit is an instrument issued by a bank or other financial institution that guarantees payment to the beneficiary (the State regulatory agency) if the holder of the letter (the owner or operator) fails to perform certain obligations. Standby letters of credit differ from traditional commercial letters of credit in that standby letters of credit cannot be drawn upon unless a specified event occurs. To ensure that the letter of credit provides secure funds for closure, post-closure care and corrective action for known releases, the final rule requires that the financial institution issuing the letter of credit must be an institution with the authority to issue such a letter and whose letter-of- credit operations are regulated and examined by a Federal or State agency. These agencies would be the same agencies discussed above as having authority to regulate trustees, and would similarly differ depending on the type of bank issuing the letter of credit. (Additional information is available in "Financial Assurance for Closure and Post-Closure Care: A Guidance Manual," May 1982.) The letter of credit, like the surety bond described above, must be issued in an amount equal to the closure, post-closure care, or corrective action cost estimates (unless multiple instruments are being used for financial assurance) and must be effective prior to initial receipt of waste or the effective date of the rule, whichever is later (in the case of closure and post-closure care), or, in the case of corrective action, within 120 days of the selection of the corrective action remedy. The letter of credit must

also contain provisions limiting cancellation similar to those described above for surety bonds. A copy of the letter of credit must be placed in the facility's operating record.

While not required in today's final rule, States implementing part 258 MSWLF programs may wish to consider requiring specific wording for letters of credit to ensure consistency among instruments and minimize the burdens of State reviews. States may wish to refer to the specified language in the subtitle C requirements as guidance (40 CFR 264.151(d)).

(4) Section 258.74(d) Insurance

Insurance is a contractual arrangement, called the policy, under which the insurer agrees to compensate the policyholder for losses. The purchase of insurance transfers the financial risk from the policyholder to the insurer. While insurance is generally considered most appropriate for coverage of contingent or unknown events, such as accidents or natural disasters, insurance is an allowable mechanism for assuring closure and post-closure care. Insurance is not an allowable mechanism for demonstrating financial assurance for corrective action under the requirements promulgated today for MSWLFs because insurance is inappropriate coverage for known corrective action. Financial assurance for corrective action is not required until a release has been detected and insurers will not issue policies to cover the cost of damages that have already occurred (analogous to issuing fire insurance for a burning building).

The final rule requires that the insurance policy must be written to cover the full amount of the closure or post-closure care cost estimates (unless multiple instruments are being used). An insurance policy for closure or post-closure care must be in effect prior to the initial receipt of waste or the effective date of the rule, whichever is later, and a copy of the insurance policy must be placed in the facility's operating record. To ensure that the insurer is a reliable source of financial assurance, the final rule requires that insurers issuing policies used to demonstrate financial assurance for closure and post-closure care must, at a minimum, be licensed or eligible to provide insurance as an excess or surplus lines insurer, in one or more States. In addition, today's rule specifies that insurance policies may be canceled by the insurer only for non-payment of premium and only 120 days after notice is sent to the owner or operator and to the State. Owners and operators may cancel the policy if they have obtained a replacement mechanism or if they have been released from financial assurance requirements.

(5) Section 258.74 (e) and (g) Corporate Financial Test and Guarantee

Section 258.74 (f) and (h) Local Government Test and Guarantee

While no specific financial tests or guarantee requirements are being finalized in today's rule, the Agency plans to propose part 258 requirements that include these requirements in 1992. The Agency anticipates that these four requirements would take effect concurrently.

(6) Section 258.74(i) State-Approved Mechanisms

Today's rule authorizes the use, only in approved States, of any mechanism that is approved by the State. State-approved mechanisms include any financial mechanisms, in addition to those described above, approved by a State for use in demonstrating financial assurance. Any State-approved mechanism must meet the performance criteria specified in § 258.74(1). A State may approve a mechanism for use generally or it may choose to approve individual mechanisms submitted by owners and operators on a case-by-case basis. In either case, a State should develop a process for approval to ensure that mechanisms meet the performance standard. In addition, States may wish to specify mechanism language and include provisions regarding qualifications of providers and limiting cancellation.

Given this framework, the Agency encourages States to consider developing innovative approaches to fulfilling the financial assurance requirements. The Agency expects a mix of instruments provided by third parties and State-sponsored mechanisms to be developed under this section. States may wish to take into account a variety of factors, such as the financial capability of local owners and operators, when developing new mechanisms. Depending on the State's financial resources and on the population of owners and operators, a State may wish to institute and subsidize a loan or grant program to assure that closure, post-closure care, and corrective action obligations will be met. Other mechanisms might include certificates of deposit, escrow accounts, enterprise funds, and enforced local government planning requirements. As a further example, the establishment of a financial assurance fund organized by the State and paid for by participating MSWLFs may prove to be an attractive alternative in many cases. The Agency intends to prepare guidance that will aid the State in establishing State-sponsored financing programs.

(7) Section 258.74(j) State Assumption of Responsibility

State assumption of responsibility involves the direct participation of the State in assuring that funds will be available to cover the costs of closure, post-closure care, or corrective action. An owner or operator will be in compliance if a State either assumes legal responsibility for the owner or operator's compliance with the closure, post-closure care and/or corrective action obligations, or if it assures that funds will be available from State sources to cover the obligations. State assumption of responsibility can take many forms, including purchase of another financial mechanism on behalf of the owner or operator, and the issuance of a State guarantee. A State could choose to assume responsibility only under certain specified conditions (e.g., where no responsible owner or operator can be found or in emergencies where the owner or operator is unable to respond effectively). Options for States to generate funds to cover the costs associated with State assumption of responsibility include funding through general revenue, a special tax, contributions from the MSWLFs receiving assurance, or tipping fees charged by participating MSWLFs. States may also wish to consider including provisions enabling the State to obtain reimbursement from owners and operators benefiting from State assumption. As with State-approved mechanisms, any mechanism for State assumption of financial responsibility must meet the performance criteria specified in § 258.74(1).

(8) Section 258.74(k) Use of Multiple Financial Mechanisms

Owners and operators may use more than one mechanism to cover their closure, post-closure care, or corrective action costs. The total amount of assurance provided by the mechanisms together must equal the cost estimates for closure, post-closure care, or corrective action. The final rule requires that, if a financial test mechanism is to be combined with a guarantee provided by a corporate relative, then the financial statements of the two firms may not be consolidated. Such a limitation is necessary because if consolidated financial statements are

used, then assets of the two firms may be double-counted for the purpose of determining whether each firm meets the requirements. This double counting may prevent the financial test from accurately measuring the financial strength of the two firms involved.

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Wednesday
October 9, 1991

Part III

Department of Education

34 CFR Part 791

Javits Gifted and Talented Students Education Grant Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 791

RIN 1850–AA38

Javits Gifted and Talented Students Education Grant Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary issues a notice of proposed rulemaking for the Javits Gifted and Talented Students Education Grant Program. These regulations are needed to implement a program of discretionary grants authorized by the Jacob K. Javits Gifted and Talented Students Education Act of 1988 (Act), part B of title IV of the Elementary and Secondary Education Act of 1965, as amended.

DATES: Comments must be received on or before November 25, 1991.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Patricia O'Connell Ross, U.S. Department of Education, Office of Educational Research and Improvement, Programs for the Improvement of Practice, Research Applications Division, 555 New Jersey Avenue, NW., room 504, Washington, DC 20208–5643.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Patricia O'Connell Ross, U.S. Department of Education, Office of Educational Research and Improvement, Programs for the Improvement of Practice, Gifted and Talented Programs, 555 New Jersey Avenue, NW., room 504, Washington, DC 20208–5643, (202) 219–2280. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., eastern time.

SUPPLEMENTARY INFORMATION: The Javits Gifted and Talented Students Education Grant Program awards grants for projects that contribute to building a national capability to identify and meet the special educational needs of gifted and talented elementary and secondary school students, including those who are economically disadvantaged, who are limited English proficient or who have disabilities. In enacting the Jacob K. Javits Gifted and Talented Students Education Act, Congress found and declared that "gifted and talented students are a national resource vital to the future of the Nation and its security and well-being" and should be provided with educational services and programs appropriate to their special needs. Congress also declared that "State and local educational agencies and private non-profit schools often lack the necessary specialized resources to plan and implement effective programs for the early identification of gifted and talented students for the provision of educational services and programs appropriate to their special needs."

The Act also calls for funding of projects that are designed to develop or improve the capability of schools in an entire State or region to serve the needs of these children through collaborations among State and local educational agencies, institutions of higher education and other public and private agencies and organizations.

These regulations do not apply to the National Center for Research and Development in the Education of Gifted and Talented Children and Youth which is also authorized under the Act. The mission of the Center is to conduct (1) research on methods and techniques for identifying and teaching gifted students and (2) surveys and analyses of information needed to accomplish the purposes of the Act. A five-year grant to operate the Center began in Fiscal Year 1989 and was awarded to the University of Connecticut at Storrs.

Activities

The Secretary proposes that the activities that may be funded under this program include demonstrations of in-service and pre-service personnel training; assessment and identification of gifted and talented students; processes for planning gifted and talented programs; provision of services to gifted and talented students, which may include summer programs, programs involving business and industry, use of technology in instruction, improving individualized instructions within the regular classroom, and activities to involve parents in all aspects of their child's education; collaboration among schools and other organizations; curriculum development; evaluation of established gifted and talented education programs; technical assistance; and dissemination.

Priorities

The Secretary proposes as possible priorities the activities listed in § 791.3, the academic subject areas, and specific instructional levels of schooling. The priority in the Act for applications serving students who are economically disadvantaged, limited English proficient or disabled will be applied as an additional factor in making grant awards.

Selection Criteria

The Secretary proposes selection criteria designed to identify projects of national significance and high quality. These criteria include: The magnitude and quality of the assessment of the need for the project, the national significance of the project, the relationship of the proposed activities to the identified needs, the comprehensiveness and coherence of the plan of operation, the quality of key personnel, the cost effectiveness of the project, the relevance of the evaluation methods, the adequacy of resources to support the project, and the appropriateness of the information and material to be obtained from the project for dissemination to practitioners and policymakers. The Secretary anticipates that projects selected with these criteria will advance the state of the art and contribute in an organized way to the body of knowledge in gifted and talented education.

Additional Factors

The Secretary proposes to consider the following additional factors in making grant awards: Whether the project contributes to the provision of services to gifted and talented students who are economically disadvantaged; diversity of projects funded under the program; and geographical distribution of projects.

Post-Award Requirements

Consistent with the Act, the Secretary proposes to require that a grantee use funds received under this program to supplement and make more effective the expenditure of State and local funds and Federal funds under chapter 2 of title I and title II of the Elementary and Secondary Education Act of 1965 for the education of gifted and talented students. The Secretary also proposes to restrict the amount of funds that may be used to purchase equipment.

Consistent with the Act, the proposed regulation would require that if a project includes delivery of services, the grantee shall use grant funds to provide for the equitable participation of students and teachers in private nonprofit elementary and secondary schools, including the participation of teachers and other personnel in pre-service and in-service training programs supported under this program.

The Secretary proposes that projects that involve instruction of students, if feasible, should compare the educational progress of students served

by the project with the progress of a suitable group of students who are not served by the project. If a comparison group approach is not possible, the proposed regulations would require that the project develop an alternative method that is both valid and reliable to assess the educational progress of student project participants.

The Secretary proposes that if the project involves activities that advance gifted and talented education through methods other than instruction to students, such as teacher training and staff development or parent training, then the project must develop an evaluation design that measures the extent to which the goals and objectives of the project are met, using evaluation methods that are both valid and reliable.

Commenters and prospective applicants should be aware that the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.590 require an annual evaluation of project effectiveness by a grantee. Pursuant to 34 CFR 75.590, the Secretary expects to require grantees to collect and report on the information required to evaluate the project, including, if appropriate, socioeconomic, education, demographic, and assessment data. The Secretary proposes a selection criterion addressing the quality of the applicant's plan to collect this information. Pursuant to 34 CFR 75.591, grantees will also be required to participate in any national evaluation conducted by the Department to help identify effective practices and promising programs in gifted and talented education.

Executive Order 12291

These proposed regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

These proposed regulations would be new regulations for this discretionary grant program. They do not impose burdensome requirements on applicants or grantees. They establish requirements for participants in the program and would not have a significant economic impact on entities participating in the program.

Paperwork Reduction Act of 1980

Section 791.21 contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of this section to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

Annual public reporting burden for this collection of information is estimated to average 40 hours per response for 500 respondents, including the time for reviewing instruction, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; attention: Daniel J. Chenok.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 504, 555 New Jersey Avenue NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and their overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 791

Education Department, Elementary and secondary education, Gifted and talented grant programs—education, Indians—education, Institutions of higher education, Reporting and recordkeeping requirements, Local educational agencies, State educational agencies.

(Catalog of Federal Domestic Assistance Number: 84.206 Javits Gifted and Talented Students Education Grant Program)

Dated: June 24, 1991.

Lamar Alexander,

Secretary of Education.

The Secretary proposes to amend title 34 of the Code of Federal Regulations by adding a new part 791 to read as follows:

PART 791—JAVITS GIFTED AND TALENTED STUDENTS EDUCATION GRANT PROGRAM

Subpart A—General

Sec.

Subpart B—Reserved

Subpart C—How Does the Secretary Make an Award?

Subpart D—What Conditions Must Be Met After an Award?

Authority: 20 U.S.C. 3061–3068, unless otherwise noted.

Subpart A—General

§ 791.1 What is the Javits Gifted and Talented Students Education Grant Program?

Under the Javits Gifted and Talented Students Education Grant Program, the Secretary supports activities designed to help build a nationwide capability in

elementary and secondary schools to identify and meet the special educational needs of gifted and talented elementary and secondary school students.

(Authority: 20 U.S.C. 3062)

§ 791.2 Who is eligible for an award?

The following are eligible to apply under this program:

(a) State educational agencies.

(b) Local educational agencies.

(c) Institutions of higher education.

(d) Other public agencies and private agencies and organizations (including Indian tribes and organizations as defined by the Indian Self-Determination and Education Assistance Act and Hawaiian native organizations).

(Authority: 20 U.S.C. 3064)

§ 791.3 What activities may the Secretary fund?

The Secretary may fund projects that are designed to meet the educational needs of gifted and talented elementary and secondary school students through such activities as—

(a) Pre-service or in-service training, or both, including summer institutes for teachers, administrators, counselors and other educational personnel;

(b) Assessment and identification of gifted and talented students;

(c) Planning of gifted and talented programs;

(d) Demonstrations of provision of services to gifted and talented students, which may include one or more of the following:

(1) Summer programs.

(2) Programs involving business and industry.

(3) Use of technology in instruction.

(4) Improving individualized instruction within the regular classroom.

(5) Activities to involve parents in all aspects of gifted and talented children's education.

(e) Collaboration among schools and other organizations;

(f) Development of curricula appropriate for gifted and talented students;

(g) Evaluation of established gifted and talented education programs;

(h) Technical assistance; and

(i) Dissemination.

(Authority: 20 U.S.C. 3064)

§ 791.4 What priorities may the Secretary establish?

Each fiscal year the Secretary may give funding priority to activities that support the Javits Gifted and Talented Program, including—

(a) One or more of the activities listed in § 791.3;

(b) One or more of the following subject areas—

(1) English, including literature;

(2) History, geography and civics;

(3) Other subjects in the humanities, including philosophy, linguistics, archeology, and the history and theory of the arts;

(4) Social and behavioral sciences;

(5) Mathematics;

(6) Science;

(7) Computer science;

(8) Foreign languages; and

(9) Visual and performing arts; and

(c) One or more instructional levels such as elementary or secondary education.

(Authority: 20 U.S.C. 3064–3065)

§ 791.5 What regulations apply?

The following regulations apply to the Javits Gifted and Talented Students Education Grant Programs:

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), part 82 (New Restrictions on Lobbying), Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)) and part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this Part 791.

(Authority: 20 U.S.C. 3061–3068)

§ 791.6 What definitions apply?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Applications
Award
Budget period
Department
EDGAR
Equipment
Facilities
Grantee
Local educational agency (LEA)
Nonprofit
Project
Private
Public
Secretary
State educational agency (SEA)

(b) *Other definitions.* The following definitions also apply to this part:

Gifted and talented students means children and youth who—

(i) Give evidence of high performance capability in such areas as intellectual, creative, artistic, or leadership capacity or in specific academic fields; and

(ii) Require services or activities not ordinarily provided by the school in order to develop such capabilities fully.

Hawaiian native means any individual whose ancestors were natives prior to 1778 of the area that now comprises that State of Hawaii.

Hawaiian native organization means any organization recognized by the Governor of the State of Hawaii primarily serving and representing Hawaiian natives.

Institution of higher education has the same meaning given that term in section 435(b) of the Higher Education Act of 1965, as amended.

(Authority: 20 U.S.C. 3063)

Subpart B—Reserved

Subpart C—How Does the Secretary Make an Award?

§ 791.20 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application according to the criteria in § 791.21.

(b) The Secretary awards up to 115 points for the criteria in § 791.21, including a reserved 15 points to be distributed in accordance with paragraph (d) of this section.

(c) Subject to paragraph (d) of this section, the maximum possible points for each criterion is indicated in parentheses.

(d) As announced in a notice published in the **Federal Register**, the Secretary distributes the reserved 15 points among the criteria in § 791.21.

(Authority: 20 U.S.C. 3061–3068)

§ 791.21 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application for a new grant under the Javits Gifted and Talented Students Education Grant Programs:

(a) *Need for the project.* (15 points) The Secretary reviews each application to determine the need for the proposed project, including—

(1) The extent to which the applicant has demonstrated the magnitude of the need, including the scope and severity of the need for the project; and

(2) The extent to which the applicant has demonstrated the specific needs of

the students, teachers, administrators, parents or paraprofessionals who will participate in the project.

(b) *National significance.* (10 points) The Secretary reviews each application to determine the potential of the project to produce nationally significant results, including—

(1) The likely impact of the proposed project on nationwide issues of educational improvement;

(2) The contribution of the proposed project to building a nationwide capability to identify and meet the special educational needs of gifted and talented students; and

(3) The potential of project activities to be implemented elsewhere.

(c) *Plan of operation.* (30 points) The Secretary reviews each application to determine the quality of the design for the proposed project and the applicant's plan for carrying it out, including—

(1) The extent to which the methods, activities, and goals will meet the needs identified in a well-conceived and coherent manner;

(2) The extent to which the methods, activities, and goals will meet the needs identified in a comprehensive way;

(3) If the project will provide instruction to students, the extent to which the applicant will use techniques and methods for teaching gifted students that are appropriate to particular grade levels or subject areas;

(4) The extent to which the project is based on current and relevant research on effective educational practices; and

(5) For projects involving more than one eligible applicant, the extent to which all of the applicants were involved in the planning of the project and the extent to which the appropriate officials from each applicant have agreed to participate in the project.

(d) *Quality of key personnel.* (10 points)

(1) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) To determine the qualifications of personnel referred to in paragraph (d)(1)(i) and (d)(1)(ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project; and

(ii) Any other qualifications that pertain to the project.

(e) *Budget and cost effectiveness.* (10 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs, particularly equipment costs, are reasonable in relation to the objectives of the project.

(f) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which—

(1) The applicant's methods of evaluation—

(i) Are appropriate to the project;

(ii)(A) In a project that will provide instruction to students, compare the educational progress of students served by the project with the progress of a suitable control group; or

(B) If the applicant demonstrates that use of such a control group is not feasible, include an alternative evaluation measure that is both valid and reliable to assess the educational progress of students served by the project.

(C) Are likely to produce reliable, valid, and significant data; and

(2) The applicant's plan specifies the data to be collected in order to evaluate the project, including, if appropriate, socioeconomic, education, demographic, and assessment data.

(g) *Adequacy of resources.* (10 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment and supplies.

(Authority: 20 U.S.C. 3061–3068)

§ 791.22 What additional factors does the Secretary consider in making new awards?

In determining the order of selection under EDGAR, 34 CFR 75.217(d) for new awards, the Secretary considers, in addition to the criteria in § 791.21, the extent to which funding an application would contribute to—

(a) The provision of services to gifted and talented students who are economically disadvantaged, limited English proficient or disabled;

(b) The diversity of projects funded under this program; and

(c) The geographical distribution of projects funded under this program.

(Authority: 20 U.S.C. 3061–3068)

Subpart D—What Conditions Must Be Met After an Award?

§ 791.30 What are the conditions on the use of an award?

(a) A grantee shall use any funds received under the Javits Gifted and Talented Students Education Grant Program to supplement and make more effective the expenditure of State and local funds and Federal funds under chapter 2 of title I and title II of the Elementary and Secondary Education Act of 1965, for the education of gifted and talented students.

(b) The Secretary may restrict the amount of funds made available for equipment and supply purchases.

(Authority: 20 U.S.C. 3062)

§ 791.31 What are a grantee's responsibilities for serving students and teachers in private schools?

If a project includes delivery of services, the grantee shall use funds awarded under this program to provide for the equitable participation of students and teachers in private nonprofit elementary and secondary schools, including the participation of teachers and other personnel in pre-service and in-service training programs supported under this program.

(Authority: 20 U.S.C. 3066)

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federal register

Wednesday
October 9, 1991

Part IV

Department of Labor

Employment and Training Administration

Job Training Partnership Act: Title III National Reserve Grants for Defense Impacted Workers; Availability of Funds and Application Procedures for Program Year 1991; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Title III National Reserve Grants for Defense Impacted Workers; Availability of Funds and Application Procedures for Program Year 1991

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant applications.

SUMMARY: The Employment and Training Administration of the Department of Labor is announcing that funds are available for a new Defense Conversion Adjustment (DCA) grant program to be funded with Department of Defense (DoD) appropriated funds. Funds are available for obligation for this new program from July 1, 1991 through September 30, 1993.

DATES: Applications will be accepted on an ongoing basis throughout the Program Year as the need for funds arises at the State and local level. Grant awards will be made during the Program Year in response to the applications received. There is no closing date for applications under this announcement. All applications prepared and submitted pursuant to these guidelines and received at the address below will be considered. Grant awards will be made only to the extent that funds are available.

ADDRESSES: It is preferred that applications be mailed. Mail or hand deliver applications to: Office of Grants and Contracts Management, Division of Acquisition and Assistance, Employment and Training Administration, U.S. Department of Labor, room C–4305, 200 Constitution Avenue NW., Washington, DC 20210, Attention: Dislocated Worker Grants, Barbara J. Carroll, Grant Officer.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Director, office of Worker Retraining and Adjustment Programs. Telephone: (202) 535–057.

SUPPLEMENTARY INFORMATION: The Employment and Training Administration (ETA) announces the availability of funds reserved by the Secretary of Labor for the delivery of dislocated worker services, and the procedures to make application for these funds. Funding is authorized by the 1990 National Defense Appropriation Act. The application procedures, selection criteria, and approval process contained in this notice are issued in accordance with The Job Training Partnership (JTPA), 20 CFR 631.61.

This program announcement consists of four parts. Part I provides the background and purpose of the discretionary funds for activities under sections 325 of the Act. Part II establishes basic U.S. Department of Labor policies and emphases for discretionary grants. Part III describes the basic grant application process. Part IV provides detailed guidelines for the preparation of applications. The primary selection criteria used in reviewing applications are also included.

The JTPA title III program is listed in the Catalogue of Federal Domestic Assistance at No. 17–246 "Employment and Training Assistance—Dislocated Workers (JTPA title III Programs).

TABLE OF CONTENTS:

Part I. Background

A. Fund Availability

Funds available to fund Defense Adjustment Conversion programs total $150 million and shall be awarded pursuant to the requirements contained in part IV.

B. Circumstances Under Which Services May Be Provided With DCA National Reserve Funds

Services may be provided as described in JTPA section 314 with Defense Conversion Adjustment program funds where there is a dislocation resulting from a reduction in Defense Department procurements or the full or partial closure of military facilities.

Part II. Department of Labor (DOL or Department) Policy and Program Emphasis

A. Basic Policies

1. Available funds shall be awarded by the Secretary in a manner that efficiently targets resources to areas most in need, and in a manner which promotes effective use of funds.

2. All projects and activities funded shall be subject to the applicable provisions of JTPA, the appropriate regulations, and to the requirements contained in these instructions and the Grant Officer's award document(s) and any subsequent grant amendment authorized.

3. Department of Defense (DoD) appropriated funds provided to the Department shall not be considered as an ongoing source of funds for existing centers or other projects or activities. For this reason, it is a general policy of the Department that it will not refund national reserve projects. Projects involving extraordinary circumstances, such as massive continuing layoffs, may be considered for refunding.

4. DoD appropriated reserve funds are not to be used to subsidize a grantee's on-going operations. A grantee may only be reimbursed for costs over and above those costs associated with the grantee's on-going costs. It is the Department's position that where DoD appropriated reserve funded projects are operated by existing State or substate grantees, administrative savings will be realized. Note: Substate grantee is defined at JPTA section 301.

5. DoD appropriated reserve funds shall only be provided to meet needs which cannot be met by JTPA formula funds or other State and local resources. Grants will be primarily awarded, therefore, where substantial numbers of workers, relatively speaking, in a substate area, labor market, region or industry are dislocated.

Note: Substate area is defined at JTPA section 301.

6. Eligible dislocated workers to be served with funds provided to the DOL by the DoD shall meet the requirements of part IV, section. (b) of these guidelines.

7. The Department shall make every effort to review and respond to each application within 45 days of the Department's receipt of the application.

8. No grant funds awarded shall be used to reimburse costs incurred prior to the date authorized by the Grant Officer.

B. Secretary's Rights Reserved

The Secretary reserves the right to distribute some of these funds in a manner other than that provided by this notice, consistent with the Act, and taking into consideration special circumstances and unique needs which may arise throughout the course of the program year.

The Secretary also reserves the right to fund individual projects on an incremental basis where the Department determines that such an action would result in the most effective use of available resources.

If insufficient application are received by the Department which are of acceptable quality and which meet the guidelines and selection criteria contained in this notice to exhaust the DoD appropriated reserve account, the Department shall take whatever action it deems necessary and appropriate, consistent with the Act and the regulations, to exhaust the funds. This could include releasing any unobligated DoD appropriated funds to be returned to the Department of Defense.

C. Basic Planning Rules

1. Operating Definition of State

For purposes of these grant application procedures, State shall be the 50 States of the United States and the following grant eligible territories and legal jurisdictions: District of Columbia, Commonwealth of Puerto Rico, Virgin Islands, Guam, American Samoa, Commonwealth of Northern Marianas, Republic of the Marshall Islands, Federated States of Micronesia, and the Republic of Palau.

2. Allocation of Costs

a. State Administration—States may include no more than 1.5 percent or $15,000, whichever is lower, for State administration of "pass-through" grants. State administrative costs requested that are above this established set aside must be accompanied by a justification showing the projected person-hours and functions to be performed and any other relevant cost information. This cost is to be included in the Administrative cost category. It is expected that these funds will be used for subgrant administration, the provision of technical assistance, onsite and desk monitoring, and data collection.

States must provide specific information regarding why State 40 percent funds are not available to support a project.

B. *Administrative Requirements for Grant Projects*—(1) In addition to applicable administrative requirements contained in the Act and regulations, some grantee organizations may be subject to other requirements as listed below:

(a) State and local Governments (except for JTPA grant recipients under the Federal, State, Governor-Secretary Agreement block grant)—OMB Circular A–87 (cost principles) and 41 CFR part 97 (Uniform Administrative Requirements for Grants with State and Local Governments). The audit requirements at 29 CFR part 96 also apply.

(b) Non-Profit Organizations—OMB Circulars A–122 and A–133 (Audits) apply.

(c) Educational Institutions—OMB Circulars A–21 and A–133 (Audits) apply.

(d) Profit Making Commercial Firms—Federal Acquisition Regulations (FAR) 48 CFR part 31 apply.

(2) Any planned equipment purchases with a unit cost of $500 or more must be justified and specifically listed along with its purchase price in the grant application. Equipment planned to be leased and the cost of such equipment must be listed in the grant application.

c. *Establishment of a Labor Management Committee*—Costs associated with the establishment of a Labor Management Committee are appropriately charged as Rapid Response costs against the State's 40 percent title III formula funds. Therefore, they are not to be charged to the grant. Ongoing operational costs of the Labor Management Committee during the period of performance of the grant are chargeable to the Administration Cost category.

d. When a participant is eligible for either partial or full reimbursement of training costs (*e.g.*, Pell grants, employer tuition reimbursement, etc.) the application must describe the procedures established for the reimbursement and/or crediting of such cost if such costs are initially charged to the national reserve grant.

Note: Where DCA national reserve funds are expended for training prior to certification of TAA eligibility, DCA national reserve funds shall not be reimbursed to the JTPA program when TAA funds become available to cover the balance of the training.

e. *Necessary and Reasonable Costs/Cost Effectiveness*—In accordance with 20 CFR 629.37(a), costs will be required to be "reasonable" and "necessary" to be charged to the grant. In reviewing a grant application, the Secretary shall consider these criteria. Areas of concern include but are not limited to: Staff to participant ratios; the proportion of staff costs to the total grant; the cost of purchased or leased equipment; the cost of proposed training as it relates to the complexity of the skills to be learned, the length of training, and the provider's access to other supplemental funding sources; etc. The extent to which the proposed project budget reflects costs that appear to be "reasonable" and "necessary" will be a significant factor in determining the project's cost effectiveness.

f. All indirect costs shall be charged to the Administration Cost category. Any indirect costs that are not administrative should be itemized separately in the appropriate cost category.

g. It is not intended that DoD appropriated reserve account projects automatically be charged 15 percent of the award amount toward the overall administrative costs of the SDA/substate grantee. The amount planned to be used for administration and the specific purposes for which it will be used must be determined in order for an administrative cost budget line item to be established. Once determined, and approved, the amount budgeted for the administration may be included in any existing SDA/substate grantee is administering the DCA national reserve grant. A portion of costs charged to the administrative cost pool may be allocated to the grant, up to the total amount included in the cost pool from the grant and consistent with overall expenditures for the grant and with the existing rules for the charging of costs against an administrative cost pool.

3. Additional Funding

The amount of a grant award cannot be increased after the grant is awarded. If circumstances change so substantially that additional funds are required to serve dislocated workers from the targeted layoff or closing, another grant application must be submitted. The same review and approval procedures will apply to a second grant application as apply to other dislocated worker project proposals. A second application shall include an up-to-date status report of performance under the first award including: Overall enrollments, enrollments by activity and expenditures (obligations and expenditures by cost category)

4. Activities

a. The application budget shall not include costs for activities or services begun with JTPA funds prior to the grant award. If initial training costs for a participant are incurred with State funds, the balance of training cost commitment for that participant must be funded by the State.

b. Applications shall not provide for using DoD appropriated reserve funds for work experience.

c. A minimum of 50 percent of all participants to be served with DoD appropriated reserve funds shall receive educational and/or occupational retraining, unless otherwise specifically authorized by the Grant Officer.

The 50 percent minimum may include participants whose training is funded by TAA, employer or union-funded tuition or training assistance, as well as Pell grants and other educational financial assistance.

d. DoD appropriated reserve funds shall not be used for rapid response activities. Rapid response activities are paid for out of State 40 percent funds.

e. DCA national reserve funds shall not be awarded to fund an individual training project or an individual activity.

5. Identification of Participants To Be Served

The applicant must demonstrate how the planned number of participants to be served was determined. Furthermore, the applicant must explain how those affected workers most in need of services to return to the labor force will be identified and assured access to necessary services.

6. Project Locations

If an applicant plans to operate more than one subject or subproject, each location shall be listed and separate budgets, implementation schedules and, where appropriate, lists of local demand occupations for retraining provided. In all cases, the applicant must also include a summary budget and implementation schedule for the entire project.

7. Placement Rate Expectations

Since funds and resources are specifically focused on the needs of a targeted group of workers and their employment and training needs, the Department expects that:

(a) Project placement rate—The planned entered employment rate for any program will be at least 70 percent.

(b) Occupational classroom training—A placement rate of 75 percent will be expected from occupational classroom training. This rate may be calculated by including the provisions of job search assistance and other services to participants who receive occupational classroom training.

(c) On-the-Job Training (OJT)—A placement rate of at least 80 percent will be expected for OJT. This rate may be calculated by including the provision of job search assistance and other services to participants who receive OJT. If the application does not believe such a rate can be achieved in its proposal, it must provide reasons for planning a lower rate.

8. On-the-Job Training (OJT)

No OJT under six weeks duration shall be funded with DoD appropriated reserve grant funds. Any OJT training for between six and 10 weeks in duration shall be consistent with an approved rationale to determine the length of training for a given occupation. The rationale to be used shall be stated in the application. A OJT contract must contain a "hire first" provision.

Part III. The Basic Application Process

A. Funding Considerations

1. Identification of Dislocated Workers

a. Dislocated workers eligible to be provided services with DoD appropriated funds are defined as individuals who meet the definitions set forth in section 301(a) of the Act and 20 CFR 631.3; 29 U.S.C. 1651(a). The dislocated workers to be served must be specifically identified in the application.

Eligible individuals may be served without regard to the State of residence of the individual (section 311(b)(1)(B); 29 U.S.C. 1661(b)(1)(B).

b. Applications should indicate that the provision of services to eligible participants will take into account those "most in need", those least likely to be recalled, those with the least transferable or most obsolete occupational skills, those with the most barriers to other employment opportunities such as poor reading or math skills. Those "most in need" for purposes of DoD appropriated reserve funding, will be determined on a project-by-project basis. Applications shall provide that those participants requiring labor exchange services and other minimal employment services are directed to other appropriate resources such as the State Employment Service.

2. DCA dislocated worker project applications selected for funding will generally be those which:

(a) Effectively identify and target the project to specific groups of dislocated workers, industries or plants, occupations and geographic areas;

(b) Specify occupational and educational training related to local demand occupations;

(c) Demonstrate a timely response to the target group's employment and training needs for such services; and

(d) Are cost-effective in terms of services to be provided and results to be achieved.

3. Priority consideration will be given to applications focusing on services to workers who "are unlikely to return to their previous occupation or industry" with particular emphasis on those requiring and wanting retraining for occupations determined to be in demand in the local economy.

B. Screening and Review of Applications

1. Screening Requirements

All applicants will be screened to determine completeness and conformity to the Act, regulations, application guidelines and other requirements contained in this announcement.

In order for an application to be in conformance, it must be paginated and include the following;

a. Transmittal letter. A transmittal letter from the Governor or the applicant's authorized signatory containing the required assurances.

b. Standard form. SF 424, Application for Federal Domestic Assistance (Catalogue No. 17.246).

c. Budget. A detailed line item budget according to the applicable cost categories found at 20 CFR 631.13 of the JTPA title III regulations and as outlined in these guidelines.

d. Project narrative. The narrative portion of the application including attachments shall not exceed twenty-five (25) double-spaced pages, typewritten on one side of the paper only. The narrative must address all of the elements specified in the application guidelines.

e. Certifications. (i) An original signature certification regarding "Drug-Free Workplace" must be submitted with the application except in the case where the applicant is a State. States may opt to submit a copy of the Statewide or agency annual certification renewable every Fiscal Year per Training and Employment Information Notice (TEIN) No. 15–90. This certification requirement applies only to the Federal grant applicant. The "Certification Regarding Drug-Free Workplace Requirements" form is found in appendix A.

(ii) A "Certification Regarding Debarment, Suspension and other Responsibility Matters, Primary Covered Transactions" must be submitted with all applications as required by the DOL regulations implementing Executive Order 12549, "Debarment and Suspension," 29 CFR 98.510. This certification form is found in appendix B.

(iii) A "Certification Regarding Lobbying" shall be submitted with each application as required by 29 CFR part 93, "New Restrictions on Lobbying." 54 FR 6736, 6751 (February 26, 1990). A suggested form incorporating the required text is found in appendix C.

2. Review and Evaluation

Complete conforming applications will be reviewed and evaluated based

on the selection criteria specified in part IV and the availability of funds.

C. Information and Reporting Requirements

1. Records. By accepting a grant, the grantee agrees that it shall maintain and make available to the U.S. Department of Labor upon request, information on the operation of the project and on project expenditures. Such information may include the implementation status of the project such as completion of subagreements, hiring of staff, date enrollments began, current and cumulative number of participants, and cumulative expenditures.

2. Reports. The grantee shall submit to the Employment and Training Administration, an original and two copies of:

a. The Worker Adjustment Program Quarterly Report. ETA Form No. 9020 (OMB No. 1205–0274), and

b. The Worker Adjustment Program Annual Program Report. ETA Form No. 9019 (OMB No. 1205–0274).

Part IV. Specific Application Requirements—Defense Conversion Adjustment Programs

An application for funds shall comply with the following requirements:

1. Application Rules

a. Definitions

In addition to or in lieu of the definitions contained and cited in § 631.2 of the JTPA title III regulations the following definitions shall apply to programs funded under this part:

(1) *DoD* means the United States Department of Defense.

(2) *Industrywide project* means services and activities provided by a single grantee to serve workers dislocated from at least three different plants or facilities within the defense industry in at least two different areas of a single State or two different States.

(3) *Multistate project* means services and activities provided in more than one State by a single grantee to serve workers located from one or more defense plants or facilities.

(4) *Substantially and seriously affected worker* means a member of any group of 100 or more workers at a defense facility who are, or who are expected to become, eligible to participate in the Defense Conversion Adjustment Program.

b. Participant eligibility—(1) an eligible dislocated worker, as defined by section 301(a) of the Act and § 631.3 of the regulations, shall be eligible for participation in activities under a defense conversion adjustment (DCA) program only if such dislocated worker has been terminated or laid off or has received a notice of termination or layoff as a consequence of reductions in expenditure by the United States for defense (including substantial reductions at military facilities) or by closure of United States military facilities. Examples include terminations or layoffs, or notices thereof, as a result of a cancellation of or a reduction in a DoD contract for a product or service, where such cancellation or reduction is a result of a reduction in an expenditure by the United States for defense or by closure of a United States military facility.

(2) An eligible dislocated worker whose termination or layoff, or notice thereof, is not directly the consequence of reductions in expenditures by the United States for defense (including substantial reductions at military facilities) or by closure of United States military facilities is not eligible for services under a DCA program, but may be eligible under the basic title III dislocated worker program.

c. Priority areas of service—(1) Priority areas of service for DCA programs shall be those geographic areas that have, or are projected by the Secretary to have the greatest number of dislocated workers who meet the eligibility criteria for services as defined in b. above.

(2) In determining priority areas of service, the Secretary shall require applicants to submit documentation that supports the assertion that the workers to be served by the application will be or were in fact, dislocated due to:

(a) Proposed and actual closure(s) of, or substantial personnel reduction(s) in, military installation(s);

(b) Proposed or actual cancellation(s) of, or reductions(s) in, any contract(s) for products or services for the Department of Defense, where the proposed closure(s), cancellation(s) or reduction(s) will have a substantial impact on employment; and

(c) Other reductions in expenditures by the United States Government for defense.

The DOL shall consult with and obtain agreement from the DoD regarding the adequacy of the documentation provided in the application before making a final decision regarding the approval of the application. The agreement from DoD will indicate that DoD concurs that the application will provide services to workers who meet the requirements under b. above.

d. Allowable activities—(1) Allowable activities for DCA programs shall be those activities authorized by section 314 of JTPA, except as provided below.

(2)(a) Job search shall be an allowable activity only to assist a totally separated dislocated worker who meets the eligibility criteria under b. above in securing a job within the United States, and where it has been determined that the dislocated worker cannot reasonably be expected to secure suitable employment within the commuting area in which the worker resides. Procedures for determining whether a dislocated worker cannot reasonably be expected to secure suitable employment within the commuting area in which the dislocated worker resides shall be described in the grant application and shall be subject to approval by the Grant Officer.

(b) The cost of job search for a dislocated worker who meets the eligibility criteria under b. above shall be an allowable readjustment cost, but shall not provide for more than 90 percent of the cost of necessary job search expenses, and may not exceed a total of $800, unless the need for a greater amount is justified in the grant application and approved by the Grant Officer.

(c) These requirements shall not apply to regular job development activities and services provided to an eligible participant within the commuting area within which the eligible participant resides.

(3)(a) Relocation shall be an allowable activity only where a dislocated worker who meets the eligibility criteria under b. above cannot reasonably be expected to secure suitable employment in the commuting area in which the dislocated worker resides and has obtained suitable employment affording a reasonable expectation of long-term employment in the area in which the worker wishes to relocate, or has obtained a bona fide offer of such employment, provided that the worker is totally separated from employment at the time relocation commences.

(b) The cost of relocation for a dislocated worker who meets the eligibility criteria under b. above shall not exceed an amount which is equal to the sum of 90 percent of the reasonable and necessary expenses incurred in transporting the dislocated worker and the dislocated worker's family, if any, and household effects, and a lump sum equivalent to three times such worker's average weekly wage. The maximum relocation allowable, however, shall not exceed $800 per participant, unless a greater amount is justified to the satisfaction of the Grant Officer in the grant application and is approved by the

Grant Officer. Necessary expenses shall be travel expenses for the dislocated worker and the dislocated worker's family and for the transfer of household effects. Reasonable costs for such travel and transfer expenses shall be by the least expensive, most reasonable form of transportation.

2. Eligible Grantee

(1) Funds available for a DCA program shall be awarded to eligible grantees in accordance with the requirements of the Act and regulations, and the procedures, criteria and process contained in these guidelines.

(2) Funds shall be distributed to eligible grantees in accordance with procedures specified in these applications.

(3) Eligible grantees for DCA programs shall be States, title III substate grantees, employers, employer associations, and representatives of employees. However, a specific eligible grantee may not be an appropriate applicant for a particular project. Applicants will be considered given the nature and extent of the proposed project.

3. Submission of Applications

(a) Two types of applications may be submitted: regular full applications and emergency applications. Regular full applications shall follow the procedures and requirements as contained in this section and sections 4 and 5. (a),(b), (c) and (d) below. Emergency applications shall be subject to the procedures and requirements contained in section 5(e) below.

(b) In the case of a multistate or industrywide project, the applicant shall submit the application directly to the Department of Labor Grant Officer. In the case of an intrastate project, the governor shall submit the application to the Grant Officer. Each application shall contain the required certifications and assurances listed in section 4 below.

4. Assurances and Certifications

(a) The following assurances shall be included with each application:

—The grantee assures that such funds shall be administered by the grantee in a manner consistent with the Act, the JTPA regulations, the requirements contained in these application guidelines and in accordance with provisions specified in the proposal and amendments approved by the Grant Officer, if any, pursuant to the grant document signed by the Department of Labor Grant Officer.

—The grantee agrees to compile and maintain information on project implementation, performance and expenditures. The information shall, at a minimum, be consistent with the project proposal and shall be available to the grantor as requested.

—The grantee assures that the information provided in the proposal is correct and the activities proposed conform to the Act, the Federal regulations for title III activities, and the requirements in these application guidelines.

—Following receipt of the grant approval, the grantee shall advise the Grant Officer of the projected date project operations will begin. If the date to be provided exceeds 30 days from receipt of the grant award, the grantee shall provide additional information explaining the projected implementation date.

—The grantee agrees to compile and maintain information on project implementation on a monthly, and performance and expenditures data on a quarterly, basis. The information shall, at a minimum, be consistent in the project proposal and shall be available to the Department as requested, and

—The grantee agrees to review expenditures and enrollment data against the planned levels for the project and notify the Department expeditiously of any potential under-expenditure of funds.

Project proposals not accompanied by the above assurances shall not be accepted for review.

(b) Each application shall also contain the following certifications:

(i) An original signature certification regarding "Drug-Free Workplace" must be submitted with the application except in the case where the applicant is a State. States may opt to submit a copy of the Statewide or agency certification required every fiscal year per Training and Employment Information Notice (TEIN) No. 15–90). This certification requirement applies only to the Federal grant applicant. The "certification Regarding Drug-Free Workplace Requirements" form is found in appendix A.

(ii) A "Certification Regarding Debarment, Suspension and Other Responsibility Matters, Primary Covered Transaction", must be submitted with all DCA national reserve applications (except those related to national or agency-recognized emergency disasters) as required by the DOL regulations implementing Executive Order 12549, "Debarment and Suspension," 29 CFR 98.510. This certification form is found in appendix B.

(iii) A "Certification Regarding Lobbying", as required by 29 CFR part 93, "New Restrictions on Lobbying." 54 FR 6736, 6751 (February 26, 1990). A suggested form incorporating the required text is found in appendix C.

5. Application Content

Each application shall contain the following information in the format outlined below:

a. Period of Award

Awards will be made for an 18-month period to allow for project start-up (not to exceed 90 days, operation, and administrative closeout. If the period of operation is extended, the period of the award will be extended by an equal time period.

b. Period of Operation

Applications should generally provide for a period of operation of 12 months may be submitted with information supporting the need for the additional period.

c. Synopsis of the Project

A short summary of pertinent information regarding the project shall be included and shall contain the following:

(1) The name and address of the project operator, along with the name and telephone number of a contract person for the grantee and project operator;

(2) The project locations (cities, counties, and States);

(3) The planned starting and ending dates of the project;

(4) The total amount of National Defense Act reserve funds requested;

(5) The name(s) of the company(ies) or bases from which the affected workers have been dislocated;

(6) The date(s) of employment termination and the number of workers affected;

(7) The names of the States, counties, and cities in which the affected workers reside;

(8) The total number of participants planned;

(9) The total number of placements planned;

(10) The planned cost per participant;

(11) The planned cost per entered employment; and

(12) The name, address, and telephone number of the signatory official for the project operator.

d. Project Narrative

The project narrative shall be a detailed explanation containing the following information, and shall not exceed 25 pages:

(1) A description of the need for the project and an explanation of how this need was determined. The description shall include:

(a) Information that demonstrates that the employment losses are the result of reductions in DoD expenditures, and that there are no prospects for reemployment in a similar industry or occupation within the commuting area in which the workers resides. Specific information must be provided demonstrating what defense reductions occurred or will occur. Such information shall include specific identification of bases closed, contracts terminated, projects canceled, etc. If the dislocations are the result of the cancellation of a subcontract, the documentation should identify both the subcontract and the prime contract that resulted in the cancellation of employment. The procedures used to make this determination shall be briefly described.

(b) The schedule for layoffs and closings.

(c)(i) The number of affected workers likely to participate in the program, taking into consideration the total number of workers affected by specific occupations, the wage levels for each occupation, the number of workers eligible to participate, the number likely to be transferred, and the number likely to be recalled. Applicants shall certify that recall within the next 12 months is highly unlikely for these dislocated workers.

(ii) The number of affected workers who possess locally transferable skills, and who can be expected to find other employment with minimal or no assistance.

(iii) Where the layoff has occurred more than 4 months prior to the submittal of the application, information indicating how the applicant determined the number of affected workers who remain unemployed and in need of services, and

(d)(i) Evidence that the workers to be served are aware of and support the proposed program operator's application.

(ii) Information on the economic conditions for the State(s) and the geographic area(s) to be served as documented by the most recent unemployment rate for each State and area, or the economic and unemployment trends in the specific industry affected, to illustrate the severity of the need for such a project, and

(iii) If the proposed target group includes workers dislocated as a result of the relocation of a company plant, the city and the State to which the plant will be relocated shall be provided.

(2) *Existing Resources.* The project narrative shall explain why these dislocated workers cannot be served with existing resources, in particular State or substate grantee JTPA title III formula funds.

(3) *Trade adjustment assistant (TAA) for workers under the Trade Act.* The application shall indicate whether an application has been made for TAA assistance, and if so, whether certification has been granted or denied for Trade Adjustment Assistance for workers. If certification has been issued, provide petition number, if available.

When a target group is certified as eligible to receive TAA including Trade Readjustment Allowances (TRA), national reserve funds may still be needed for those services not allowable under TAA such as assessment, job search assistance including job clubs, transportation assistance within the commuting area, counseling, child care and training that does not meet TAA training criteria. The coordination procedures established to track the project participants receiving TAA-funded training shall also be explained.

(4) *Employer/union assistance.* The project narrative shall explain in detail the nature and duration of any contractual obligation of, or any voluntary arrangement by, the employer(s) or union(s) to provide training-related services to terminated employees. When applicable, severance pay arrangements shall be addressed.

(5) *Labor market information.* The project narrative shall contain a detailed discussion on available labor market data as it relates to the specific area in which dislocation services will be provided. Specific listings of demand occupations in the areas where the dislocated workers will be trained shall be included, as well as an explanation of how such occupations were identified. The narrative also shall contain a certification that the number of unemployed workers available for employment in the identified demand occupations for which retraining is planned is insufficient to meet the need.

(6) *Coordination and linkage.* (a) Governors and substate grantees. (i) The application shall include evidence that the governor of each State and the appropriate title III grantee of each substate area in which a project site is proposed have been informed of such application and given an opportunity to comment on how the proposed project would affect workers in the State or substate area.

(ii) Letters from the appropriate Governors and substate grantees shall be included to document that the opportunity was provided for review and comment of the application. Each Governor's letter shall indicate why the State has not funded the proposed project/subproject for that State as well as a description of the funding and assistance, if any, it will provide to the project/subproject. The substate area grantee letter shall indicate why the substate grantee is unable to provide sufficient services to the proposed project/subproject in the substate area, as well as a description of the funding and assistance, if any, it will provide to the project/subproject.

(b) *Private industry council (PIC)/ local elected official (LEO).* All grant applications shall provide evidence that the appropriate PICs and LEOs have been given the opportunity for review and comment.

(c) *Labor organizations.* All applications for dislocated workers projects where a substantial number (at least 20 percent) of affected workers are represented by a labor organization(s) shall provide documentation of full consultation with the appropriate local labor organization in the development of the project design. Thus, documentation is required for each union representing at least 20 percent of the affected workers. The application must describe the involvement (if any) of organized labor in the development and operation of the proposed project activities.

(d) *Others.* (i) Each application shall show that the proposed project for dislocated workers will coordinate with other State and local agencies and related programs including, but not limited to:

(aa) DoD Readjustment Program;

(bb) Veterans' programs (including JTPA, Title IV–C) available in the area;

(cc) Disabled Veterans Outreach Program (DVOP) and Local Veteran's Employment Representatives (LVER);

(dd) The Unemployment Compensation System;

(ee) The State Employment Service;

(ff) The Pell Grant program;

(gg) Other Federal programs;

(hh) The Trade Adjustment Assistance (TAA) program, if applicable; and

(ii) Other appropriate State and local program resources.

(ii) In those instances where State and other funds, such as vocational education, economic development, TAA, or special appropriations, are available to the project, the application shall include a brief discussion of the activities for which these funds will be used and their relationship to the national reserve funds requested, taking into consideration section 141(b) of JTPA.

(7) *Description of services.* All applications shall include the description of services to be provided:

(a) *Intake and eligibility determination.* Describe the procedures to be used to recruit and ensure the eligibility of each participant. Indicate what entity shall be accountable for eligibility determination.

(b) *Basic readjustment services.* Describe how assessment, job search assistance, counseling, job development and placement services and any other activities will be coordinated with retraining activities (assessment procedures shall include the capability to determine if a participant's reading skills are below the 8th grade level). See JTPA section 314(c), 29 U.S.C. 1661c(c).

(c) *Retraining services.* Describe the retraining to be provided, including the types and lengths of retraining for various occupations or occupational areas, and the likely providers of both on-the-job and classroom skill training.

Note: Funds provided to DOL by DoD for DCA programs shall not be provided to substitute for such activities as the employer's traditional training responsibility associated with product model changes, the introduction of new products, general employee upgrading, and other such changes. See JTPA section 314(d), 29 U.S.C. 1661c(d).

(d) *Participant supportive services.* Discuss which services will be provided and how they will be coordinated with training activities, including needs-related payments. See JTPA section 314(e), 29 U.S.C. 1661c(e).

(8) *Implementation plan.* The following information regarding implementation plans shall be included.

(a) A schedule for the implementation of program activities upon receipt of funds and a discussion of initial actions taken to support implementation. Enrollment of participants normally should occur no later than 90 days following the Grant Officer's authorization to insure costs against the funds awarded. If such a time schedule cannot be met or is inappropriate, an explanation of the implementation schedule provided shall be included, and

(b) Project quarterly implementation data showing the following projected cumulative data for the overall project and for such subproject site:

(i) Enrollment for each major activity: Assessment, job search assistance, classroom training, occupational skills training, on-the-job training and other training;

(ii) Total terminations;

(iii) Number of participants entering employment from each activity; and

(iv) Expenditures.

(9) *Planned outcomes.* The applications shall include project data showing the projected overall:

(a) Cost per participant;

(b) Cost per entered employment;

(c) Entered employment rate; and

(d) Average wage rate at entered employment.

(10) *Financial and management capability.* Except where the actual project operator will be the State or the substate grantee, the application shall include a two-page or less description of the fiscal and management capabilities of the prospective project operator, including how the prospective project operator (or the division which will have responsibility for this project) is or will be organized. The description shall include information demonstrating:

(a) Current or previous relevant experience in providing services to dislocated workers or in administering training and employment programs; and

(b) The capability of the project operator to maintain and report as necessary required fiscal and management information.

(11) *Detailed line item budget.* (a) Costs for each item shall be allocated under the following cost categories: Administration, Basic Readjustment Services, Retraining, and Supportive Services including needs-related payments as classified in 20 CFR 631.13.

(i) The budget shall provide information by both cost categories as discussed below and by line-item. The suggested format in plate I is recommended for utilization and explanation of the budget and budget narrative.

(ii) Any costs that are subcontracted shall be so noted by the name of the contractor, and activity or function to be performed. Staffing costs shall be specifically identified. Training costs for off-the-shelf catalogue prices or which meet the requirements for acceptable fixed-unit price, performance based contracts as published in the Federal Register at 54 CFR 10459 (March 13, 1989) shall be identified. Administrative costs prorated as required by 20 CFR 629.38(e)(2) shall be identified.

(iii) For a pass-through project, where the State is not the project operator, the State may reserve 1 and 1/2 percent (.015) of the total grant award or $15,000, whichever is less, for costs associated with the administration of the grant such as contract negotiation, reporting activities and project oversight. This cost is to be charged to the Administration cost category. A State requesting administrative costs that exceed the maximum set aside must provide a justification including the projected person-hours and functions to be performed.

(iv) Any planned equipment purchases or leases with a unit cost of $500 or more must be justified and specifically listed along with its purchase price.

BUDGET—PLATE I

	Administration	Basic Readjustment	Retraining	Supportive Services	Total
(1) Staff Salaries	X	X	X		X
Fringe Benefits (Attach supplement/narrative, listing and explaining each position, function, annual salary, no. of months charged to grant, time charged to grant).	X	X	X		X
(2) Staff Travel	X	X	X		X
(3) Communications	X	X	X		X
(4) Facilities	X	X	X		X
Rent	X	X	X		X
Maintenance	X	X	X		X
Utilities	X	X	X		X
(5) Consumable Office Supplies	X	X			X
(6) Consumable Instructional Materials		X	X		X
(7) Equipment	X	X	X		X
Lease	X	X	X		X
Purchase (Attach supplement/narrative, listing and explaining each item leased and/or purchased $500 or over).	X	X	X		X

BUDGET—PLATE I—Continued

	Administration	Basic Readjustment	Retraining	Supportive Services	Total
(8) Relocation (Section 314)		X	X		X
(9) Subcontracts					
Tuition			X		X
OJT wages			X		X
Fixed Unit Price 20 CFR 629.38(a)(2)					X
Audit	X				
Other (Identify)	X	X	X		X
(10) Supportive Services				X	X
Needs Related payments				X	
Child Care				X	X
Transportation				X	
Others				X	
(11) Other (Identify)	X	X	X	X	X
(12) Totals	X	X	X		X

Instructions: All spaces marked with an "X" must be completed, if none, show an "O". Observe paranthetical notes cited above and attach a budget supplement/narrative to explain basis for each line item. Information should make clear how line item costs were calculated, classified and allocated, especially how staff positions are assigned and justified.

(b) Where DCA national reserve funds will be combined with funds from other sources, e.g., other defense funds, employer or union training funds, State formula-allotted funds, State vocational education or economic development funds, the budget shall indicate for each line item the total costs and the amount to be funded from the DCA national reserve account and the other funding source(s).

(c) No direct costs shall be charged for any activity that is included in the indirect cost lines item.

(e) *Emergency application.* (1)(a) Applications for emergency funding consideration shall be submitted only to address situations where:

(b) The dislocations occur under circumstances which do not provide a reasonable period of time to develop a full proposal, that is a sudden and unexpected event,

(c) The number of dislocated workers who meet the eligibility criteria is such that both the JTPA title III substate grantee and the State are unable to respond to the dislocated with existing resources; and

(d) The workers did not receive a 60-day notice under the Worker Adjustment and Retraining Notification Act in advance of the layoff.

(2)(a) Emergency proposals shall be considered under a two-step process. The first step shall be an initial proposal request which shall contain limited key information. The second step, which will be necessary only where there is a decision made by the Grant Officer to approve the initial request, shall be the full documented proposal. An applicant may also, if it so wishes, submit a fully documented proposal where the Grant Officer determines not to approve an initial emergency proposal.

(b) The applicant's initial proposal request shall not exceed two pages (plus the transmittal letter and the assurances and certifications). This initial request may be submitted by FAX. An original signed request must also be submitted, and must be on file in the Department before any funds shall be released. The initial request shall contain:

(i) An explanation of the circumstances justifying the proposal to be submitted as an emergency request;

(ii) The areas to be served by the grant;

(iii) A brief assessment of the need, including the procedures used to determine that there are limited prospects for reemployment in a similar industry or occupation within the commuting area in which the affected workers reside;

(iv) An estimate of the number of individuals impacted by the emergency who met the eligibility criteria under this subpart;

(v) An estimate of the number of individuals to be served by the grant;

(vi) The amount of funds being requested;

(vii) A brief summary of the activities to be conducted;

(viii) A statement that demonstrates the employment losses are the result of reductions in DoD expenditures, and that there are no prospects for reemployment in a similar industry or occupation within the commuting area in which the worker resides. Specific information demonstrating what defense reduction(s) occurred shall be provided (see 5.(d)(1)(a) above); and

(ix) The assurances and certifications specified in section 4.

(3) A full proposal shall be submitted where the Secretary approves an initial proposal request. The full proposal shall be submitted in accordance with the requirements contained in the award letter responding to the initial proposal request and the procedures and requirements contained in section 5.(a), (b), (c) and (d) above. The full proposal shall be reviewed following established procedures for the selection, review and approval of discretionary grant applications as contained in sections 6, 7 and 8.

(4)(a) If a decision is made to fund a proposal, an amount, not to exceed one-third of the request, shall immediately be made available to commence operations allowable under the Act, regulations, the requirements and instructions contained in this document, and the Grant Officer approval letter, and

(b) Once the fully documented proposal has been reviewed, the Department shall determine how much, if any, additional funds to provide. The final amount provided, when combined with the initial amount awarded shall not exceed the total initial request.

(6) *Selection criteria.* These criteria shall be used to determine the acceptability of the fully documented proposal and the final award amount for any already approved emergency award.

(a) *Overall criteria.* Grant applicants for funds under this subpart shall be evaluated and selected for funding where DoD has concurred that the dislocated workers to be served by the program described in the application, as documented by the information required in 5.(d)(1)(a), shall be or were dislocated as a result of DoD expenditure reductions and based on the extent to which the proposed project:

(1) Demonstrates that the proposal meets the requirements for this part;

(2) Demonstrates that the proposal meets the purposes of the Act and the regulations;

(3) Will encourage an effective response to the dislocations;

(4) Promote an effective use of funds; and

(5) Provides all information as required for a proposal.

(b) *Specific criteria.* The following specific criteria shall apply to the evaluation of applications and selection of grantees for DCA dislocated worker projects;

(1) *Priority area.* The Grant Officer shall determine whether this application will serve eligible dislocated workers in a priority area of service as defined by section 1.d.

(2) *Severity of need.* The Grant Officer shall consider the severity of the circumstances and need, as described in the grant application (*e.g.*, the immediacy of the schedule for layoff(s) and plant closing(s), the number of individuals affected, and the local and State unemployment rates compared to the national rates).

(3) *Target group.* The Grant Officer shall consider the concentration of the eligible individuals in a specific occupation(s), plant(s), or geographic area(s). The Secretary shall consider the extent to which the project is focused on the affected subpopulation actually requiring retraining services in order to remain in the labor force, as shown by an analysis of the characteristics of the affected workers. The requirements of this paragraph shall be a major factor in determining the responsiveness of a proposal.

(4) *Coordination and linkages; utilization of resources.* The Grant Officer shall consider the extent to which the applicant has demonstrated that the project will be integrated with other existing program and community resources, including Defense Adjustment programs, State/substate JTPA title III formula-funded activities other JTPA programs where appropriate, welfare programs, and the Trade Adjustment Assistance program, where appropriate.

(5) *Services.* The Grant Officer shall consider the services to be provided and the service mix, including the degree to which the services appear to meet the needs of the target population; and the extent to which specific occupations are identified for retaining and placement. The applicant shall demonstrate that demand exists for workers to be served by the project, as well as the degree to which a proposal provides for retraining in specific occupations, either in an on-the-job or in a classroom setting or both. This demonstration shall be a major factor in determining whether to fund the application.

(6) *Management capability.* The application shall contain assurance of the project operator's fiscal and program management capabilities to administer the proposed project. The Grant Officer shall consider the project operator's demonstrated ability to begin program operations expeditiously in making a funding decision.

(7) *Cost effectiveness.* The Grant Officer shall consider the cost effectiveness of the project, *e.g.*, cost per participant, cost per placement, and cost per activity in relation to services provided and the outcomes projected including expected wage levels; the level of funding designated for client services as opposed to staff support and administration; the proportion of staff costs to those costs directly attributable to client services such as tuition, and tools. The Grant Officer shall also consider whether costs are necessary and reasonable. The costs effectiveness of the project shall be a major factor in determining whether to fund the application.

(8) *Other considerations.* The Grant Officer shall consider the overall effectiveness and efficiency of the proposal itself as compared to other proposals received.

(9) The Grant Officer shall consider written comments regarding the application submitted by the Governor or other interested parties.

(10) The Grant Officer shall consider the comments of DoD as to whether this application shall serve eligible workers dislocated as a result of reductions in Defense procurement and base closings.

(7). *Application Review.* (a) An application shall be reviewed and approved or rejected based upon overall responsiveness of the application's content and the application of the selection criteria, taking into consideration the extent to which funds are available.

(b) Applications shall be rejected when:

(1) The application proposes to assist workers who were not dislocated as a result of reductions in defense spending or military base closings; (DoD comments shall be used for this determination. Projects not considered for funding for this reason shall be automatically considered for funding with regular title III discretionary funds);

(2) The application does not meet the standards established by these requirements;

(3) Other available applications appear to be more effective in achieving the goals of this category;

(4) The information required is not provided in sufficient detail to permit adequate assessment of the proposal;

(5) The information regarding why the State and substate grantee were unable to fund the proposed project is not provided or is unsatisfactory; or

(6) The application is not consistent with statutory and/or regulatory requirements.

8. *Approval.* (a) In the case of an award to a State or to an existing State JTPA substate area grantee, the Grant Officer shall issue an award letter and Notice of Obligation (NOO) pursuant to the Secretary/Governor Agreement. For others, an appropriate grant document shall be executed by the appropriate Department of Labor Grant Officer and the grant applicant's official signatory.

(b) The Act, JTPA regulations, these requirements, the grant award letter/agreement, assurances, grant application and any approved amendments thereto, and the approval by the Grant Officer in writing shall govern the operation of the project.

(3) The effective date for the use of the funds shall be the date of the grant award letter or grant agreement authorizing costs to be incurred against the funds awarded. No costs may be incurred against awarded funds prior to such date. The authority to incur costs immediately is given, in most cases, to permit the most timely response to the needs of the newly dislocated worker. Where authority to immediately incur costs is not provided, specific instructions will be included in the Grant Officer's award letter regarding the actions needed in order to obtain authority to incur costs.

(4) Instructions regarding grant amendments required due to changes in circumstances after the grant award will be transmitted in a separate document.

Signed at Washington, DC this 3rd day of October, 1991.

Roberts T. Jones,

Assistant Secretary for Employment and Training.

Appendix A

Certification Regarding Drug-Free Workplace Requirements

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code):

_____

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

_____

Name of Applicant Organization

_____

Name and Title of Authorized Signatory

_____

Signature Date

Appendix B

Certification Regarding Debarment, Suspension, and other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR part 98, section 98.510, Participants' responsibilities.

(Before Signing Certification, Read Attached Instructions Which Are an Integral Part of the Certification)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

_____

Name of Applicant Organization

_____

Name and Title of Authorized Signatory

_____

Signature Date

Appendix C

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant local, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

_____

Name of Applicant Organization

_____

Name and Title of Authorized Signatory

_____

Signature Date

*Note: In these instances, "All," in the Final Rule is expected to be clarified to show that it applies to covered contract/grant transactions over $100,000 (per OMB).

[FR Doc. 91–24316 Filed 10–8–91; 8:45 am]

BILLING CODE 4510–30–M

federal register

Wednesday
October 9, 1991

Part V

The President

Legislation

Wednesday
October 9, 1991

Part V

The President

Proclamation 6345—Child Health Day, 1991

Proclamation 6346—National Firefighters Day, 1991

Federal Register
Vol. 56, No. 196
Wednesday, October 9, 1991

Presidential Documents

Title 3—

The President

Proclamation 6348 of October 7, 1991

Child Health Day, 1991

By the President of the United States of America

A Proclamation

Our children's state of health is, in many ways, a measure of our success and character as a people. Thus, on Child Health Day, we reaffirm our commitment to helping every American youngster enjoy the best possible start in life—beginning with high quality health care throughout pregnancy for expectant mothers and extending through each child's formative years.

In recent decades, we have made important progress toward the goal of better child health. For example, early immunization has virtually eliminated some childhood diseases, and, with increased vigilance on the part of parents and public health officials, it has the potential to conquer several others. A variety of educational programs and support services—both public and private—have encouraged more and more pregnant women to protect the lives of their unborn children through proper nutrition and prenatal care. The United States Child Nutrition Programs, including the School Lunch and School Breakfast Programs, have helped to bring healthy, well-balanced meals to millions of youngsters. Nevertheless, we know that we still have much work to do.

Statistics show that many children die or suffer permanent disability as a result of injuries—injuries that could be prevented. In fact, the Department of Health and Human Services reports that more youngsters ages 1 through 19 die from injuries than from all other causes of death combined. In 1988 alone, injuries claimed the lives of more than 22,000 children. These injuries may be the result of accidents or physical abuse and other crimes.

Fortunately, we are finding ways to reduce the risk of accidental injury among children. Scientific research and advances in technology have enabled us to develop safer toys and flame-retardant clothing, as well as child-proof packaging for medicines and toxic chemicals. Growing public awareness of safety issues has led to protective legal measures, such as State statutes that require child passenger restraints in motor vehicles. Local initiatives requiring the use of bicycle helmets, fencing around swimming pools, and certain safety standards for playground equipment are also helping to reduce the risk of childhood injury. Of course, the success of these and other measures requires our vigilance and cooperation as parents and neighbors.

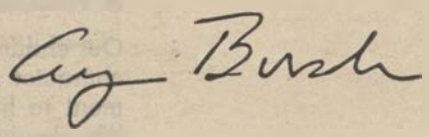
If we are to protect the lives and health of our Nation's children, then we must also redouble our efforts to stop the scourges of child abuse, drunk driving, and other crime. A stable, loving home and a safe, nurturing environment are essential to every youngster's physical well-being and emotional development.

Government cannot replicate the love and commitment of parents; neither can it fulfill their primary responsibility in caring for their children. However, public officials, parents, and physicians—as well as educators and other concerned Americans—can work together to promote the health and safety of our Nation's youth. Today, let us renew our resolve to do just that. Precious lives depend on it.

The Congress, by joint resolution approved May 18, 1928, as amended (36 U.S.C. 143), has called for the designation of the first Monday in October as "Child Health Day" and has authorized and requested the President to issue annually a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim Monday, October 7, 1991, as Child Health Day. I urge all Americans to join me in renewing our commitment to protecting the lives and health of this Nation's youngest citizens.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of October, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.



[FR Doc. 91-24575
Filed 10-8-91; 10:29 am]
Billing code 3195-01-M

Presidential Documents

Proclamation 6349 of October 7, 1991

National Firefighters Day, 1991

By the President of the United States of America

A Proclamation

When you ask a group of youngsters what each would like to be when he or she grows up, frequently, at least one will reply: "a fireman!" Even though the aspirations of youth often change over time, it is, nonetheless, a very telling answer. Children as well as adults recognize the extraordinary courage of firefighters—and the tremendous importance of their work. On this occasion, Americans of all ages join in paying grateful tribute to the heroic individuals who serve our Nation as professional and volunteer firefighters.

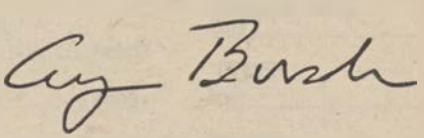
The responsibilities of a firefighter often entail considerable personal risk and sacrifice. In addition to enduring what are sometimes long and unpredictable hours—a burden shared by the loved ones who must cope with worry and waiting—firefighters are frequently called to put themselves in harm's way to protect the lives and the property of others. Today we remember in a special way those firefighters who have perished in the line of duty. Their great sacrifice underscores the risks that firefighters accept, each and every day, for our sake.

Professional and volunteer firefighters not only bring prompt, highly skilled assistance to victims of fire and other emergencies but also play a leading role in promoting public safety. Through schools and community programs across the country, firefighters are helping to educate the public—in particular, children—about ways to avoid fire and safety hazards. They are also teaching individuals what to do if an emergency strikes. Many firefighters who are also trained as paramedics and emergency medical technicians are helping to save lives by instructing citizens in first aid—including cardiopulmonary resuscitation.

In recognition of the lifesaving work of our Nation's firefighters, the Congress, by House Joint Resolution 189, has designated October 8, 1991, as "National Firefighters Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 8, 1991, as National Firefighters Day. I encouarge all Americans to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of October, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.



[FR Doc. 91-24584
Filed 10-8-91; 10:39 am]
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Presidential Documents

Proclamation 6339 of October 7, 1991

National Firefighters Day, 1991

By the President of the United States of America

A Proclamation

When you ask a group of youngsters what each would like to be when he or she grows up, frequently, at least one will reply "a fireman." Even though the aspirations of youth often change over time, it is, nonetheless, a very telling answer. Children as well as adults recognize the extraordinary courage of firefighters—and the tremendous importance of their work. On this occasion Americans of all ages join in paying grateful tribute to the heroic individuals who serve our Nation as professional and volunteer firefighters.

The responsibilities of a firefighter often entail considerable personal risk and sacrifice. In addition to enduring what are sometimes long and unpredictable hours—a burden shared by the loved ones who must cope with worry and waiting—firefighters are frequently called to put themselves in harm's way to protect the lives and the property of others. Today we remember in a special way those firefighters who have perished in the line of duty. Their great sacrifice underscores the risks that firefighters accept, each and every day, for our sake.

Professional and volunteer firefighters not only bring prompt, highly skilled assistance to victims of fire and other emergencies but also play a leading role in promoting public safety. Through schools and community programs across the country, firefighters are helping to educate the public—in particular, children—about ways to avoid fire and safety hazards. They are also teaching individuals what to do if an emergency strikes. Many firefighters who are also trained as paramedics and emergency medical technicians are helping to save lives by instructing citizens in first aid—including cardiopulmonary resuscitation.

In recognition of the lifesaving work of our Nation's firefighters, the Congress, by House Joint Resolution 199, has designated October 8, 1991, as "National Firefighters Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim October 8, 1991, as National Firefighters Day. I encourage all Americans to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of October, in the year of our Lord nineteen hundred and ninety-one, and of the Independence of the United States of America the two hundred and sixteenth.

[FR Doc. 91-[illegible] Filed 10-8-91; [illegible] am]
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Federal Register

Vol. 56, No. 196

Wednesday, October 9, 1991

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S. 363/Pub. L. 102–118

To authorize the addition of 15 acres to Morristown National Historical Park. (Oct. 4, 1991; 105 Stat. 586; 1 page) Price: $1.00

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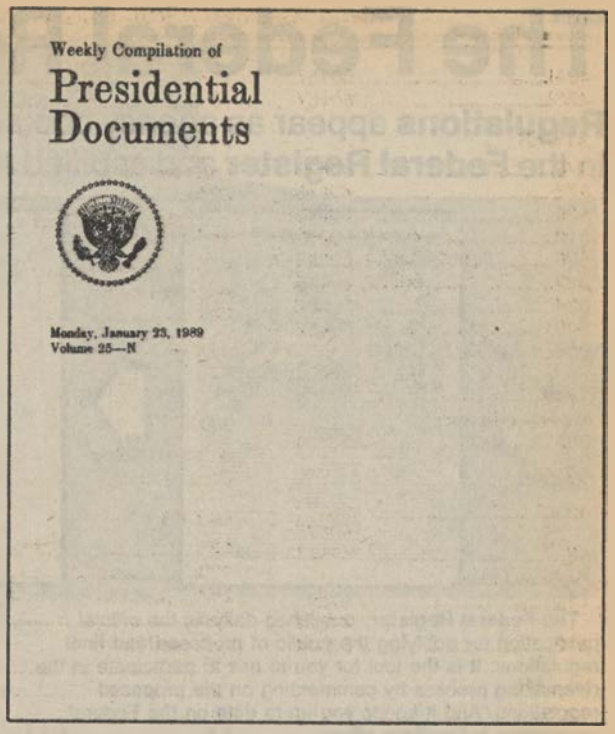

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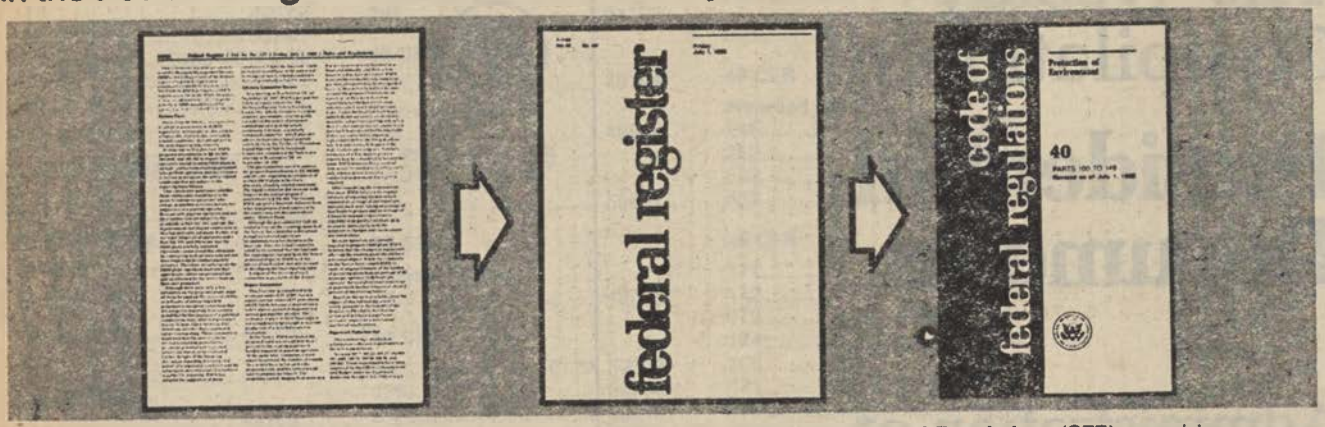

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102d Congress, 1st Session, 1991

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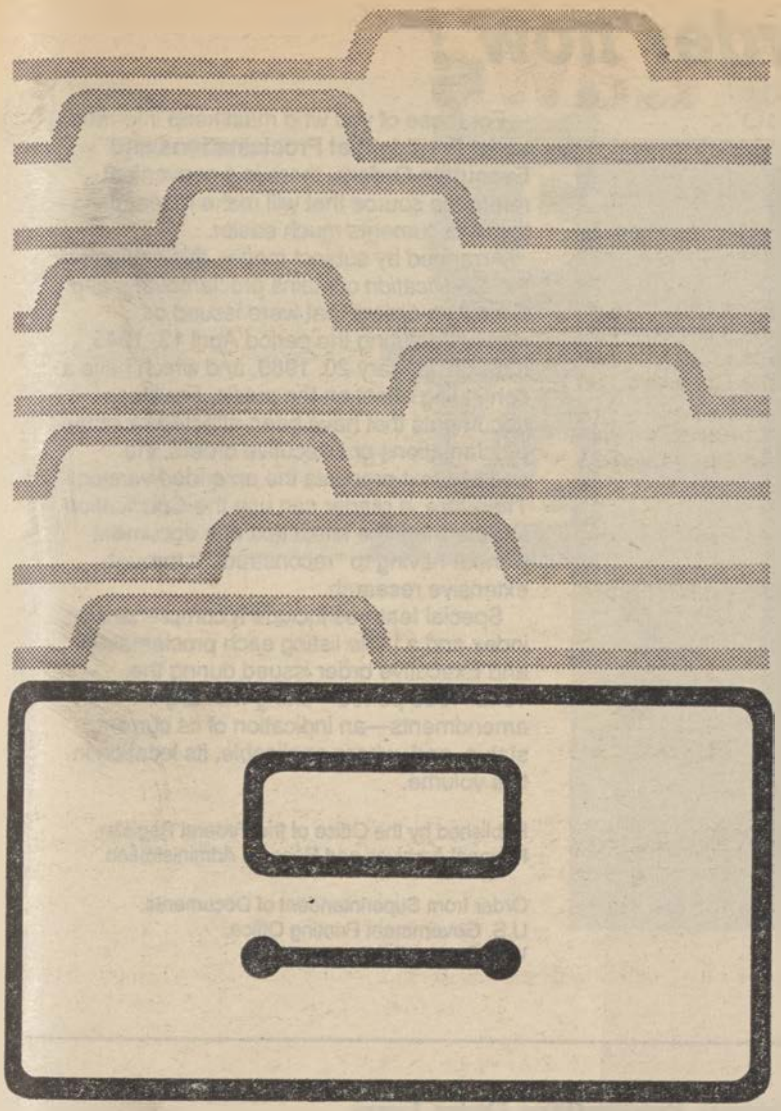

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in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1989
SUPPLEMENT: Revised January 1, 1991

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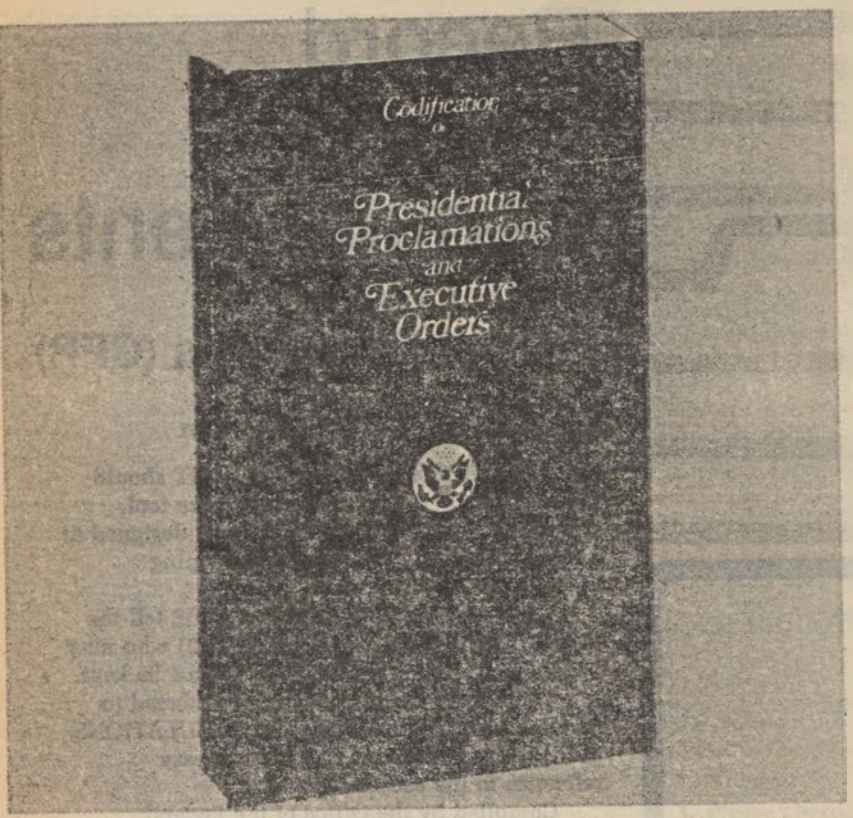

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